



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated December 5, 2019 which reads as follows:*

**“G.R. No. 234468 (*Benny Licuanan y Canlas v. People of the Philippines*)** – When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.<sup>1</sup>

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision<sup>2</sup> dated May 15, 2017 and the Resolution<sup>3</sup> dated August 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38662. The petition ascribes grave error on the part of the CA when it upheld petitioner’s conviction despite irregularities in the police operation.

The antecedents follow.

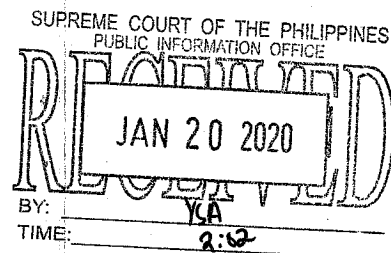
On March 17, 2008, SPO1 Joachim Panopio (SPO1 Panopio) was at the Station Anti-Illegal Drugs (SAID) Office when he received a call around 6:30 p.m. from a concerned citizen on the illegal drug activity of one Benny “Ben” C. Licuanan (Licuanan) in St. Joseph Subdivision, Pulang Lupa Dos, Las Piñas City. SPO1 Panopio relayed the information to their Chief, Police Senior Inspector (PSI) Ma-amo, who then dispatched SPO1 Panopio, SPO2 Junnifer Tuldanes (SPO2 Tuldanes), and PO3 Erwin Sabbun (PO3 Sabbun) to verify the report.<sup>4</sup>

<sup>1</sup> *Mallillin v. People*, 576 Phil. 576, 593 (2008).

<sup>2</sup> Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Mario V. Lopez and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 31-41.

<sup>3</sup> *Id.* at 43-44.

<sup>4</sup> *Id.* at 33-34.



Wearing civilian clothing, the three officers proceeded to the reported area and parked their red-plated vehicle along Naga Road. They walked towards Segundo Street and arrived around 7:00 p.m. There was light from the houses along the street, where SPO2 Tuldanes observed two men from a distance of about three meters conversing with each other. SPO2 Tuldanes overheard one of them, later identified as Licuanan, say, "*Pare pa hits naman diyay [low bat] kasi ako.*" The other person, later identified as Gilbert "Borotoy" S. Murao (Murao), replied, "*Sige pare meron ako dito mamili ka.*" Murao then took out a plastic sachet from his pocket.<sup>5</sup>

SPO2 Tuldanes arrested Murao, while SPO1 Panopio arrested Licuanan. After informing Murao and Licuanan of their constitutional rights, the arresting officers brought them to the SAID Office for booking and investigation.<sup>6</sup>

In the presence of Licuanan, Murao, and the arresting officers, the investigator on duty, PO2 Michael Holanda (PO2 Holanda), marked two confiscated plastic sachets with the initials "BCL 17 March '08" and "GSM-17 Mar. '08," respectively. PO2 Holanda also prepared the Request for Laboratory Examination and the Request for Drug Test.<sup>7</sup>

SPO1 Panopio then brought the marked specimens to the Crime Laboratory in Camp Crame, Quezon City. Forensic Chemist PSI Mirza A. Samson (PSI Samson) examined the specimens, which tested positive for methylamphetamine hydrochloride, per Chemistry Report No. D-132-08.<sup>8</sup>

Consequently, in two separate Information<sup>9</sup> similarly dated March 19, 2008, Licuanan and Murao were charged with violation of Section 11, Article II, Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002<sup>10</sup> before the Regional

<sup>5</sup> Id. at 34.

<sup>6</sup> Id.

<sup>7</sup> Id. at 34, 38.

<sup>8</sup> Id. 34-35.

<sup>9</sup> Id at 61-62.

<sup>10</sup> Sec. 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos

Trial Court (RTC) of Las Piñas City, Branch 200. The similarly worded accusatory portions (except for the weight of the confiscated drug, *i.e.*, 0.13 gram and 0.04 gram, respectively) read as follows:

That on or about the 17<sup>th</sup> day of March, 2008 in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there, willfully, unlawfully and knowingly have in his possession, custody and control x x x gram of Methylamphetamine Hydrochloride (*shabu*), a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>11</sup>

The cases were tried jointly. When arraigned on April 15, 2008, Licuanan and Murao pleaded not guilty to the crime charged.<sup>12</sup>

The arresting officers testified that they did not mark the plastic sachets at the place where it was confiscated for fear that Licuanan and Murao might have relatives in the area which could endanger their lives. They also admitted that they did not proceed to the nearest *barangay* hall, nor did they take photographs of the confiscated items. It is undisputed that there were no representatives from the *barangay*, media or the Department of Justice (DOJ) to witness the marking of the seized items.<sup>13</sup>

Murao and Licuanan both opted not to testify anymore and had no documentary evidence to offer.<sup>14</sup>

On April 1, 2016, the RTC rendered judgment<sup>15</sup> finding both accused guilty beyond reasonable doubt of violation of Section 11, Article II of R.A. No. 9165. Applying the presumption of regularity in the arresting officers' performance of their duties, the trial court accepted the testimonies of SPO1 Panopio and SPO2 Tuldanes claiming they were in possession of the seized sachets until they

---

(P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, [*marijuana*] resin or [*marijuana*] resin oil, methamphetamine hydrochloride or "[*shabu*]", or other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine MDMA or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of [*marijuana*].

<sup>11</sup> *Rollo*, p. 33.

<sup>12</sup> *Id.* at 33, 62.

<sup>13</sup> *Id.* at 35.

<sup>14</sup> *Id.* at 65.

<sup>15</sup> *Id.* at 61-72.

reached their office.<sup>16</sup> Convinced that the integrity of the seized items was duly preserved, the RTC disposed:

**WHEREFORE AND THE FOREGOING CONSIDERED,**  
judgment is hereby rendered to wit:

1. In **Criminal Case No. 08-0244**, this court finds accused **GILBERT MURAO y SANTOS @ "BOROTOY" GUILTY BEYOND REASONABLE DOUBT** of violation of Section 11 ARTICLE II, [R.A. No.] 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and applying the Indeterminate Sentence Law, he is hereby **SENTENCED** to suffer imprisonment of **TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO FOURTEEN (14) YEARS AND EIGHT MONTHS, AS THE MAXIMUM TERM** and to pay a **FINE** of Three Hundred Thousand Pesos (P300,000.00).
2. In **Criminal Case No. 08-0245**, this court finds accused **BENNY LICUANAN y CANLAS @ "BEN" GUILTY BEYOND REASONABLE DOUBT** of violation of Section 11 ARTICLE II, [R.A. No.] 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and applying the Indeterminate Sentence Law, he is hereby **SENTENCED** to suffer imprisonment of **TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO FOURTEEN (14) YEARS AND EIGHT MONTHS, AS THE MAXIMUM TERM** and to pay a **FINE** of Three Hundred Thousand Pesos (P300,000.00).

The period of preventive imprisonment already served by the herein accused shall be credited in the service of his sentence pursuant to the provision of Art. 29 of the Revised Penal Code.

\* Considering the penalty imposed by this Court, the Jail Warden, Bureau of Jail Management and Penology (BJMP) is hereby **ORDERED** to transmit the person of accused **GILBERT MURAO y SANTOS @ "BOROTOY"** to the National Bilibid Prison Muntinlupa City with proper escort within fifteen days upon receipt of this Order. With respect to accused **BENNY LICUANAN y CANLAS @ 'BEN'**, let a Warrant of Arrest be issued against him for his immediate apprehension.

The Branch Clerk of Court of this Court is hereby ordered to prepare the corresponding Commitment Order or Mitimus Order to the National Bilibid Prison[,] Muntinlupa City thru the Las Piñas City Jail Warden.

The confiscated 0.13 gram and 0.04 gram of Methylamphetamine Hydrochloride (Exhibits "E-1" & "E-2") are

---

<sup>16</sup> Id. at 69-70.

hereby declared forfeited in favor of the government and shall be dispensed of in accordance with the law.

**SO ORDERED.**<sup>17</sup>

On appeal, the CA affirmed the RTC's judgment *via* the decision subject of this review.<sup>18</sup> The CA stressed that the implementing rules do not render void a seizure for non-compliance with the requirements of Section 21 of R.A. No. 9165<sup>19</sup> under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved.<sup>20</sup> Since the police officers were merely conducting an on-the-spot surveillance in response to a report of illegal drug activity, the CA considered this a justifiable ground for non-compliance with the witness requirement, reasoning that the police officers could not be expected to summon representatives from the media, the DOJ, or local public officials to witness the arrest or inventory of the seized items.<sup>21</sup> The CA also accorded the officers concerned the presumption of regularity in the performance of official duty in concluding that they were able to establish the chain of custody of the seized items, and that the integrity and evidentiary value of the seized items were preserved in substantial compliance with the requirements of the law.<sup>22</sup> Thus:

**WHEREFORE**, premises considered, the appealed decision dated April 1, 2016 of the RTC, Branch 200, Las Piñas City in Criminal Cases Nos. 08-0244 and 08-0245 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>23</sup>

<sup>17</sup> Id. at 71-72.

<sup>18</sup> Supra note 2.

<sup>19</sup> Before the passage of R.A. No. 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'," approved on July 15, 2014, the pertinent provision of R.A. No. 9165, the prevailing law at the time of the arrest, stated:

*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.]

<sup>20</sup> *Rollo*, p. 36.

<sup>21</sup> Id. at 37.

<sup>22</sup> Id. at 38-39.

<sup>23</sup> Id. at 40-41.

Both accused filed a Motion for Reconsideration,<sup>24</sup> which the CA denied in a Resolution<sup>25</sup> dated August 31, 2017 for lack of merit.

Undaunted, only Licuanan filed the instant petition, raising the lone issue of:

WHETHER THE [CA] GRAVELY ERRED IN AFFIRMING [LICUANAN'S] CONVICTION FOR VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165, DESPITE THE SERIOUS IRREGULARITIES IN THE CONDUCT OF THE POLICE OPERATION AND THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE *CORPUS DELICTI* OF THE CRIME CHARGED.<sup>26</sup>

The Office of the Solicitor General (OSG) filed its Comment<sup>27</sup> on May 28, 2018. It opines that in arrests in *flagrante delicto*, strict compliance with the procedure laid down in Section 21 of R.A. No. 9165 is not required. Contending that the chain of custody of the seized contraband was duly established by the prosecution, the OSG argues that Licuanan could not question anymore the admissibility of the prosecution's evidence for the first time on appeal.

On the other hand, Licuanan insists in his Reply<sup>28</sup> dated September 10, 2018 that the prosecution failed to discharge its burden to show every link in the chain of custody of the physical evidence, from the moment the plastic sachets were seized until they were offered in court as evidence. Lastly, Licuanan countered that even if the admissibility of the evidence was not timely raised as an issue, the Court has the power to correct any error, even if unassigned, if necessary, in arriving at a just decision.

We find the petition meritorious.

The argument that Licuanan and Murao could no longer question the admissibility of the prosecution's evidence for the first time on appeal because they did not present rebuttal evidence is misplaced. Although Licuanan and Murao chose not to testify in their defense, and remained silent during trial, the CA could, and should, still review the conclusions drawn by the trial court from the prosecution's evidence. Indeed, "the evidence of the prosecution must

---

<sup>24</sup> Id. at 45-48.

<sup>25</sup> Id. at 43-44.

<sup>26</sup> Id. at 17.

<sup>27</sup> Id. at 103-117.

<sup>28</sup> Id. at 121-129.

stand on its own strength and not rely on the weakness of the evidence of the defense.”<sup>29</sup> If the prosecution failed to sufficiently prove its case, it would be immaterial that the defense failed to present rebuttal evidence.

“It must be emphasized that an appeal in criminal cases leaves the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned.”<sup>30</sup> Here, it is apparent that the prosecution failed to establish the identity of the physical evidence with moral certainty, particularly, that the sachets of *shabu* allegedly confiscated from Licuanan and Murao were the same items presented before the trial court.

The issue here is not novel. Whether the contraband was seized in a buy-bust operation that was planned ahead or in an arrest in *flagrante delicto* with little or no time to prepare, the identity of the illegal drug must still be established with moral certainty to sustain a conviction. In *People v. Alconde*,<sup>31</sup> we reiterated a long line of cases,<sup>32</sup> emphasizing that:

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under [R.A. No.] 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. x x x  
(Citations omitted)

Chain of custody means “the duly recorded authorized movements and custody of seized drugs or controlled chemicals or

<sup>29</sup> *People v. Santos*, G.R. No. 223142, January 17, 2018, 852 SCRA 23, 38.

<sup>30</sup> *Santos v. People*, G.R. No. 232950, August 13, 2018.

<sup>31</sup> G.R. No. 238117, February 4, 2019.

<sup>32</sup> *People v. Gamboa*, G.R. No. 233702, June 20, 2018; *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356; *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303; *People v. Sumili*, 753 Phil. 342 (2015); *People v. Bio*, 753 Phil. 730 (2015); *People v. Viterbo*, 739 Phil. 593 (2014); and *People v. Umipang*, 686 Phil. 1024 (2012).

plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.”<sup>33</sup> It is incumbent on the prosecution to establish the four links in the chain of custody of the confiscated item:

*[F]irst*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>34</sup>

Contrary to the conclusions of the RTC that were upheld by the CA, the records display glaring gaps in the chain of custody over the confiscated items. The prosecution’s failure to show an unbroken chain in the custody of the seized item casts reasonable doubt on its integrity and evidentiary value.

On the first link, Section 21 of R.A. No. 9165<sup>35</sup> requires the conduct of a physical inventory and photograph of the items immediately after seizure and confiscation. Before the amendment in R.A. No. 10640, at the time of Licuanan’s arrest, the physical inventory and photograph of the items were required to be done in the presence of no less than three witnesses: a representative from the media, the DOJ, and any elected public official.<sup>36</sup>

In case of warrantless seizures, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provide that the venue of the physical inventory and photograph of the seized items may be at the nearest police station or at the nearest office of the apprehending officer.<sup>37</sup> The IRR of R.A. No. 9165 further includes a *proviso* that

<sup>33</sup> Dangerous Drugs Board Regulation No. 1, Series of 2002, Section 1(b).

<sup>34</sup> *People v. Dela Cruz*, 744 Phil. 816, 831 (2014), citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

<sup>35</sup> *Supra* note 19.

<sup>36</sup> *Id.*

<sup>37</sup> The IRR of R.A. No. 9165 is now part of statutory law with the passage of R.A. No. 10640, entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,’” approved on July 15, 2014, Section 1 of which states:

Sec. 1. Section 21 of Republic Act No. 9165, otherwise known as the “COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,” is hereby amended to read 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



also materialized in the amendment by R.A. No. 10640, stating that non-compliance with the prescribed procedural requirements will not necessarily render the seizure and custody of the items void and invalid, provided that there is a justifiable ground for non-compliance and the integrity and evidentiary value of the seized items are properly preserved.<sup>38</sup> While “there might be instances of non-compliance, such is allowed only for justifiable reasons and if the integrity and evidentiary value of the seized items had been duly preserved by the apprehending officers. Non-compliance is clearly not an option, as the law actually contemplates substantial compliance.”<sup>39</sup> Thus:

The prosecution has the burden of showing that two conditions were complied with: *first*, deviation was called for under the circumstances; and *second*, that the identity and integrity of the evidence could not have been, at any stage, compromised. These two conditions ensure that the spirit and intention of the chain of custody requirement are complied with. Viewed in this light, substantial compliance is not mere token compliance, but essentially conforms to strict compliance with the chain of custody requirement.<sup>40</sup>

While it is true that Licuanan’s arrest was not the product of a pre-planned operation and the police officers could not be expected to have summoned the required witnesses beforehand, there was no justifiable reason why none of the required witnesses could be present for the marking of the contraband at the police station. No excuse was also offered on why the marking could not be conducted at the nearest *barangay* hall or outpost where a *barangay kagawad* could easily

---

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 persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the **physical inventory and photograph** shall be conducted at the place where the search warrant is served; or at the **nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**: *Provided, finally*, That **noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.** (Emphases supplied)

x x x x

<sup>38</sup> Id.

<sup>39</sup> *People v. Asdali*, G.R. No. 219835, August 29, 2018.

<sup>40</sup> Id.

*barangay* hall or outpost where a *barangay kagawad* could easily have been summoned to witness the marking of confiscated items, much less why the seized sachets were not photographed at all. There was no mention anywhere of a physical inventory and this court is strained to assume that such was part and parcel of the marking of the seized items. Recall that it was the investigating officer on duty at the police station, PO2 Holanda, who marked the seized plastic sachets, witnessed only by Licuanan and Murao and the arresting officers.

In the first place, the unsupported statement that the persons arrested may have relatives in the area which could endanger the arresting officers' lives, is not only speculative, but also could not sweepingly excuse all of the glaring lapses to produce moral certainty that the plastic sachets of *shabu* presented in court were the same ones confiscated from Licuanan and Murao, if any were confiscated from them at all. Note that there was no statement that the three officers were unarmed, or even that Licuanan or Murao were armed.

To compound the arresting officers' lapses, the intended testimony of PO2 Holanda, as stipulated by the parties, did not state from whom he received the confiscated plastic sachets, their condition upon receipt, and the precautions taken while the items were in his possession. The prosecution did not even bother to inform the court of the identity of the person who received the marked sachets at the laboratory for examination and the person charged with custody and safekeeping of the seized items after it was chemically analyzed by PSI Samson pending its presentation in court.

Although substantial compliance with the requirements of Section 21 of R.A. No. 9165 could have sufficed in this case, the very identity of the physical evidence which constitutes an integral part of the *corpus delicti* in a charge of illegal possession of dangerous drugs was not established with moral certainty due to the glaring and inexcusable gaps in the evidence for the prosecution.

Finally, the prosecution's reliance on the presumption of regularity is erroneous. "The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise."<sup>41</sup>

From the foregoing discussion, it is clear that based on reasonable doubt, Licuanan's acquittal is in order. Murao should also be acquitted, considering that the favorable judgment benefits him as

---

<sup>41</sup> Id., citing *People v. Dela Cruz*, supra note 34, at 832.

co-accused in this case. Section 11, Rule 122 of the Rules of Court, as amended, provides:

SEC. 11. *Effect of appeal by any several accused.* – (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.<sup>42</sup>

**WHEREFORE**, the petition is **GRANTED**. The Decision of the Court of Appeals dated May 15, 2017 and the Resolution dated August 31, 2017 in CA-G.R. CR No. 38662 are **REVERSED** and **SET ASIDE**. Accordingly, petitioner Benny “Ben” C. Licuanan and his co-accused Gilbert “Borotoy” S. Murao are **ACQUITTED** of the crime charged based on reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to cause their **IMMEDIATE RELEASE**, unless they are being lawfully held in custody for any other reason, and to report to this court within five days from receipt of this Resolution the action he has taken.

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court

**141-B**

PUBLIC ATTORNEY'S OFFICE  
Special and Appealed Cases Service  
Counsel for Petitioner Licuanan  
DOJ Agencies Building  
NIA Road corner East Avenue  
Diliman, 1101 Quezon City

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M. No. 12-7-1-SC)

Judgment Division (x)  
Supreme Court

Court of Appeals(x)  
Manila  
(CA-G.R. CR No. 38662)

The Solicitor General  
134 Amoroso Street, Legaspi Village  
1229 Makati City

The Presiding Judge  
Regional Trial Court, Branch 200  
1740 Las Piñas City  
(Criminal Case Nos. 08-0244 & 08-0245)

Benny Licuanan y Canlas &  
Gilbert Murao y Santos (x)  
Petitioner / Co-Accused  
c/o The Director General  
Bureau of Corrections  
1770 Muntinlupa City

UR

<sup>42</sup> RULES OF COURT, Rule 122, Sec. 11.