



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. 227021

Present:

- versus -

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
A. REYES, JR., and
CARANDANG, JJ.

CHRISTOPHER ILAGAN y BAÑA
alias "WENG",
Accused-Appellant.

Promulgated:

05 DEC 2018

x-----*[Signature]*-----x

DECISION

CAGUIOA, J.:

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated January 26, 2016 of the Court of Appeals, Seventeenth Division (CA) in CA-G.R. CR-HC No. 06786, which affirmed the Judgment³ dated January 23, 2014 rendered by the Regional Trial Court of Batangas City, Branch 84 (RTC) in Criminal Case No. 17648, which found herein accused-appellant Christopher Ilagan y Baña alias "Weng" (accused-appellant Christopher) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts

The Information⁵ filed against accused-appellant Christopher for violation of Section 5, Article II of RA 9165, pertinently reads:

¹ See Notice of Appeal dated February 10, 2016; *rollo*, pp. 19-21.
² *Rollo*, pp. 2-18. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Henri Jean Paul B. Inting concurring.
³ CA *rollo*, pp. 49-58. Penned by Presiding Judge Dorcas P. Ferriols-Perez.
⁴ 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).
⁵ Records, pp. 1-2.

[Handwritten Signature]

That on or about the 11th day of September, 2012, at about 5:20 o'clock in the afternoon, at Poblacion 3, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully sell, deliver and give away three (3) heat-sealed transparent plastic sachets, each containing dried marijuana fruiting tops, having a total weight of 3.20 grams, a dangerous drug.

Contrary to law.⁶

Version of the Prosecution

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

At around 5:00 o'clock in the afternoon of September 11, 2012, a civilian asset went to the San Jose Municipal Police Station and reported to SPO1 Flores and PO2 Mitra that there is a certain "Weng", a helper of the Juennesse Flower Shop, who is engaged in the selling *marijuana*. SPO1 Flores and PO2 Mitra informed their Chief, PCI Eduard Padilla Mallo, who immediately instructed them to prepare for a buy-bust operation. SPO1 Flores prepared the coordination report for the PDEA although the same was sent and received by the PDEA Calamba only at 8:30 in the evening because the police station has no long distance line. They also prepared two (2) pieces of One Hundred Peso (P100) bill with serial numbers AG790598 and CN548140. SPO1 Flores who was also the duty desk officer recorded in Entry No. 9261 of the police blotter (Exhibit "N") the buy-bust operation to be made and their departure.

Thereafter, SPO1 Flores, PO2 Mitra and the civilian asset proceeded to Poblacion 3, San Jose, Batangas on board a private vehicle, a Toyota Corolla. When their civilian asset pointed to the Juennesse Flower Shop, SPO1 Flores parked the car approximately four (4) meters away from it. PO2 Mitra and the civilian asset alighted while SPO1 Flores was left inside the vehicle. Since the front portion of the establishment is covered with glass, SPO1 Flores can easily see the inside portion of the flower shop. When PO2 Mitra and the civilian asset entered the flower shop, the only person inside was "Weng" who at that time was lying on a chair. The asset told the latter that his companion will buy *marijuana* and upon hearing the same, "Weng" immediately stood up. PO2 Mitra was just beside the asset while they were talking to "Weng". PO2 Mitra then gave the Two One Hundred Peso Bills amounting to Two Hundred Pesos (Php200) to the asset and at that moment, "Weng" brought out from his right pocket three (3) pieces of heat sealed sachet containing suspected *marijuana*. PO2 Mitra gave the money to the civilian asset who handed it to "Weng". After receiving the money, "Weng" gave to PO2 Mitra the suspected *marijuana*. As a pre-arranged signal, PO2 Mitra scratched his nape to inform SPO1 Flores that he already bought *marijuana*. When SPO1 Flores saw the pre-arranged signal, he immediately entered the shop and help (*sic*) PO2 Mitra in arresting the pusher. They informed the pusher, who identified himself as herein accused Christopher Ilagan y Baña, of his constitutional rights. When they frisked the accused, PO2 Mitra found the two (2) pieces of One Hundred Peso bills.

⁶ Id.



Afterwards, the policemen brought the Accused (*sic*) to the barangay hall of Brgy. 3, San Jose, Batangas. In the presence of the Brgy. Captain Modesto Kalalo and media representative Mr. Lito Rendora, they conducted the inventory of the confiscated items. PO2 Mitra marked the three (3) sachets containing suspected *marijuana* with markings "ROM-1", "ROM-2" and "ROM-3" (Exhibits "I", "J", and "K") and the two (2) One Hundred Peso bills with markings "ROM-4" and "ROM-5" (Exhibits "G" and "G-1"). Photographs were taken during the inventory at the barangay hall (Exhibits "F" to "F-4"). Thereafter, they went back to the police station. PO2 Mitra was in custody of the confiscated items from the time of the arrest and while they were going back to the police station. Upon arrival, SPO1 Flores recorded in the police blotter the result of the buy-bust operation as Entry No. 9262 (Exhibit "N-1").

At around 8:00 o'clock in the evening of that day, SPO1 Flores and PO2 Mitra brought to the Batangas Provincial Crime Laboratory Office the three (3) sachets of *marijuana* (Exhibits "I", "J", and "K") with the request for laboratory examination (Exhibit "C"). The letter request and the specimen were received by PO1 Bereña as reflected in the stamp-marked portion of the letter request. Entries were then placed on the chain of custody form (Exhibit "M"). Thereafter the police officers went back to the police station and placed the accused on (*sic*) jail. They executed their sworn statements (Exhibit "A") in connection with (*sic*) arrest of the accused.⁷

Version of the Defense

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

At around 5:00 o'clock in the afternoon of September 11, 2012, Christopher Ilagan working as a flower arranger, was inside the Jeunesse Flower Shop, arranging flowers for delivery to Seven Eleven Store. While he was working, three (3) police officers, one in civilian clothes and two in uniform, entered the flower shop. The police held his hands and cuffed him. They forced him to board the mobile patrol and brought him to the police station. Police Officers Nelson Flores and Raffy Mitra forced him to sign a document (Receipt of Property Seized) (Exhibit "D"). He refused to sign the document bearing his computer printed name because the *marijuana* stated therein was not taken from him. When he did not sign the paper, the police brought him to the house of the barangay captain and introduced him to the latter. They went to the barangay hall wherein pictures of him were taken.

Prior to his arrest, the accused worked in Jeunesse flower shop for ten to eleven years already. He knew the three policemen because the old police station was just near the place. He did not ask why the police handcuffed him. He was then resisting, the reason why the police was forcing him to board the mobile patrol. At the time the police presented him to the barangay captain, he was not aware that he was already arrested by the police. He did not mention anything to the barangay captain while he was at the barangay hall and he does not remember anything that he has done wrong.

⁷ CA rollo, pp. 50-51.

According to Brgy. Captain Modesto Kalalo, the police did not present any illegal drugs, such as *shabu* but he signed a document purported to be the Receipt of Property Seized (Exhibit “D”). Afterwards, the accused was brought back to the police station and put inside the jail (*sic*). When the police officers left the barangay hall, Brgy. Captain Modesto Kalalo called up the Chief of Police to inform him of the incident and to verify if the police really did bring the arrested person to the police station. He also recorded what happened that night in their barangay blotter (Exhibit “5”).⁸

Ruling of the RTC

In the assailed Judgment⁹ dated January 23, 2014, the RTC found Christopher guilty of the crime charged. The dispositive portion of the Judgment reads:

WHEREFORE, judgment is hereby rendered finding the accused, **CHRISTOPHER ILAGAN y BAÑA GUILTY** beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (selling of dangerous drugs) and sentencing him to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (PhP500,000.00)**.

x x x x

SO ORDERED.¹⁰

The RTC ruled that the buy-bust operation is a legally effective and proven procedure sanctioned by law for apprehending drug peddlers and distributors.¹¹ It also ruled that the prosecution was able to prove the elements of illegal sale of dangerous drugs.¹² Furthermore, the requirements of Section 21 of RA 9165 were duly complied with, thus, the prosecution was able to preserve the integrity and evidentiary value of the *marijuana* seized from the accused.¹³

Aggrieved, accused-appellant Christopher appealed to the CA.

Ruling of the CA

In the assailed Decision¹⁴ dated January 26, 2016, the CA affirmed accused-appellant Christopher’s conviction. The dispositive portion of the Decision reads:

⁸ Id. at 52.

⁹ Id. at 49-58.

¹⁰ Id. at 58.

¹¹ Id. at 55.

¹² Id.

¹³ Id. at 56.

¹⁴ *Rollo*, pp. 2-18.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The assailed Judgment dated January 23, 2014 of the Regional Trial Court (RTC) of Batangas City, Branch 84 in Criminal Case No. 17648 is **AFFIRMED**.

SO ORDERED.¹⁵

The CA ruled that the prosecution was able to prove all the elements of illegal sale of *marijuana*.¹⁶ It pointed out that accused-appellant Christopher was positively identified by PO2 Raffy Mitra (PO2 Mitra) and SPO1 Nelson V. Flores (SPO1 Flores).¹⁷ It held that the discrepancies and minor inconsistencies in the testimonies of the witnesses referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair their credibility.¹⁸ It likewise ruled that the integrity and identity of the seized *marijuana* were not compromised because the buy-bust team was able to preserve the integrity and evidentiary value of the drugs seized.¹⁹ It held that the failure of the police officers to mark the items seized from accused-appellant Christopher immediately upon their confiscation at the place of arrest does not automatically impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence.²⁰ Lastly, it held that non-compliance with Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 will not render an accused's arrest illegal or the items seized or confiscated from him inadmissible.²¹

Hence, the instant appeal.

Issue

Whether or not accused-appellant Christopher's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit accused-appellant Christopher as the prosecution utterly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165; thus resulting in its failure to prove his guilt beyond reasonable doubt.

Accused-appellant Christopher was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of

¹⁵ Id. at 16.

¹⁶ Id. at 10.

¹⁷ Id. at 10-12.

¹⁸ Id. at 13.

¹⁹ See id. at 13-15.

²⁰ Id. at 14.

²¹ Id. at 15.



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 must 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.²²

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.²³ 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,²⁴ 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.²⁵ 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 requisite to make a finding of guilt.²⁶

In this connection, Section 21,²⁷ Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, 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; (2) that 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

²² *People v. Opiana*, 750 Phil. 140, 147 (2015).

²³ *People v. Guzon*, 719 Phil. 441, 451 (2013).

²⁴ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

²⁵ *People v. Guzon*, supra note 23, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

²⁶ *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

²⁷ 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[.]

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 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.”²⁸

As stated, Section 21 of RA 9165 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 witnesses**, 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 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. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, 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 enough time to gather and bring with them the said witnesses.²⁹

It is true that there are cases where the Court had ruled that 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.³⁰ The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.³¹

²⁸ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

²⁹ *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.

³⁰ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

³¹ *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

In the present case, the buy-bust team committed several glaring procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug — which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of accused-appellant Christopher.

The required witnesses were not present at the time of apprehension and seizure.

Here, none of the three required witnesses was present at the time of seizure and apprehension as they were only called to the police station for the conduct of the inventory. As PO2 Mitra, part of the apprehending team, himself testified:

- Q: By the way, where were you when you placed those markings to these items?
A: At the barangay hall of Poblacion 3, ma'am.
- Q: Who were present when you placed those markings?
A: Barangay Captain Modesto Kalalo, the media man Lito Rendora.
- Q: Why did you not place the markings while you were still at the Jeunesse Flower Shop?
A: Because we brought them to the barangay hall, so that it could be in the presence of the media.³²

SPO1 Flores likewise testified that they did the marking in the barangay hall and it was only there that two of the required witnesses were present:

- Q: **What happened when you arrived to the barangay hall?**
A: **When we arrived there, Barangay Captain Modesto Kalalo was already there and I remember that we waited for the arrival of Mr. Lito Rendora, the representative of the media, ma'am.**
- Q: Why did you wait for the representative of the media?
A: Because he will be the one to sign in the inventory of the seized items, Ma'am.
- Q: Do you have any DOJ representative?
A: I think, we don't have any DOJ representative at that time, Ma'am.
- Q: Why, Mr. witness?
A: We were not able to contact him at that time, Ma'am.

x x x x

- Q: Do you know why PO2 Mitra marked the items, the three (3) plastic sachets at the barangay hall and not at the place of the buy bust operation inside Jeunesse Flower Shop?

³² TSN, February 7, 2013, p. 18.



A: He marked it there because we believe that the witnesses, the Brgy. Captain and the media representative should see the actual marking, Ma'am.³³

Clearly, the buy-bust team failed to comply with the requirements of Section 21(1) of RA 9165.

First, no photographs of the seized drugs were taken at the place of seizure. Even if there were photographs taken at the barangay hall, this is still not what the law contemplates as the photographing should be done at the place of apprehension, unless a justifiable reason to do it in some other place has been established.

Second, neither was the inventory and marking of the alleged seized items done at the place of apprehension. There was no justifiable ground offered by the prosecution on why the marking of the seized drugs was done in the barangay hall and not at the place of apprehension of accused-appellant Christopher.

Lastly, there was no compliance with the three-witness rule. Based on the narrations of the buy-bust team, not one of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly seized from accused-appellant Christopher. The media representative and barangay captain were only present during the conduct of the inventory in the barangay hall. Moreover, there were only two witnesses present — a barangay official and a media representative — when the law explicitly requires three witnesses. Neither did the police officers nor the prosecution — during the trial — offer any viable or acceptable explanation for the police officers' deviation from the law.

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*,³⁴ 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*,³⁵ 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 was evidence of the

³³ TSN, November 29, 2012, pp. 17-18.

³⁴ G.R. No. 228890, April 18, 2018.

³⁵ 736 Phil. 749 (2014).



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”.³⁶ (Emphasis, italics and underscoring in the original)

The prosecution has the burden of (1) proving its 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. Lim*:³⁷

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:

(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

³⁶ *People v. Tomawis*, supra note 34, at 11-12.

³⁷ G.R. No. 231989, September 4, 2018.

enforcers from obtaining the presence of the required witnesses even before the offenders could escape.³⁸
(Underscoring supplied; emphasis in the original)

In this case, none of the abovementioned reasons is present. SPO1 Flores explained that the police officers conducted the inventory and photographing of the seized drugs in the barangay hall merely because they said that the witnesses were there.³⁹ 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 buy-bust 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.”

In addition, the saving clause does not apply to this case. 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 **(1) recognize any lapses on the part of the police officers and (2) be able to justify the same.**⁴⁰ Breaches of the procedure contained 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* had been compromised.⁴¹

Here, none of the requirements for the saving clause to be triggered is present. *First*, the prosecution did not concede that there were lapses in the conduct of the buy-bust operation. *Second*, the prosecution failed to provide justifiable grounds for the apprehending team’s deviation 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, accused-appellant Christopher must perforce be acquitted.

³⁸ Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

³⁹ TSN, November 29, 2012, p.18.

⁴⁰ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

⁴¹ See *People v. Sumili*, 753 Phil. 342, 350 (2015).



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

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.⁴² 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.⁴³

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.⁴⁴ The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.⁴⁵ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.⁴⁶

In this case, 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. 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,⁴⁷ the conduct of buy-bust operations requires the following:

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

V. SPECIFIC RULES

x x x x

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

1. Buy-Bust Operation - in 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[;]

⁴² 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."

⁴³ *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

⁴⁴ *People v. Mendoza*, supra note 35, at 770.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

- 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 arms['] 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 and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui*⁴⁸ 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

⁴⁸ 393 Phil. 68, 133 (2000).

or at the very least marked, photographed and inventoried the seized items according to the procedures in its own operations manual.⁴⁹

A review of the facts of the case negates this 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 accused-appellant Christopher were the same drugs brought to the crime laboratory and eventually offered in court as evidence.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale 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 drug. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant Christopher.

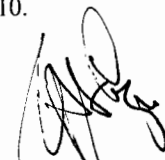
As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the 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, 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.⁵⁰

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated January 26, 2016 of the Court of Appeals, Seventeenth Division in CA-G.R. CR-HC No. 06786 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Christopher Ilagan y Baña alias “Weng”** is **ACQUITTED** of the crime 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.

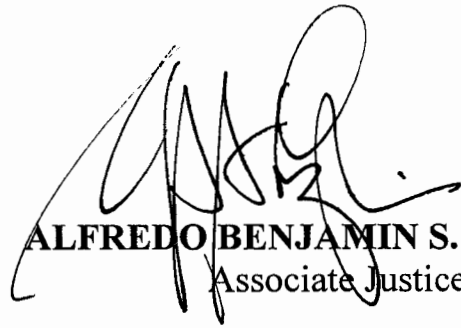
Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

⁴⁹ *People v. Supat*, G.R. No. 217027, June 6, 2018, pp. 18-19.

⁵⁰ *People v. Otico*, G.R. No. 231133, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

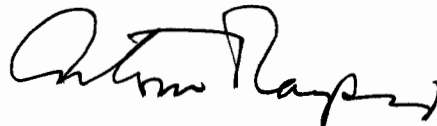


SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice




ANDRES B. REYES, JR.
Associate Justice



ROSMARID D. CARANDANG
Associate Justice

ATTESTATION

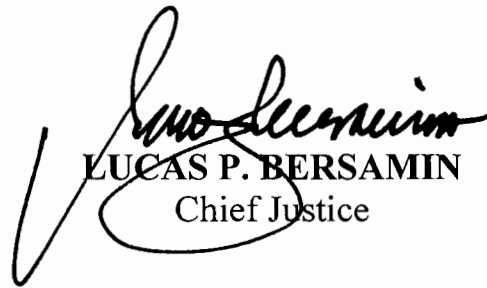
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

