



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 234151

Present:

- versus -

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

CESAR DELA CRUZ y LIBONAO
ALIAS SESI of ZONE 3,
MACANAYA, APARRI,
CAGAYAN,

Promulgated:

05 DEC 2018

Accused-Appellant.

[Signature]

x-----x

DECISION

CAGUIOA, J.:

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated September 6, 2016 of the Court of Appeals, Sixth Division (CA) in CA-G.R. CR-HC. No. 06459, which affirmed the Decision³ dated September 2, 2013 rendered by the Regional Trial Court, Branch 07, Aparri, Cagayan (RTC) in Criminal Case No. II-10512, which found herein accused-appellant Cesar Dela Cruz y Libonao (Dela Cruz) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The Information⁴ filed against Dela Cruz for the violation of Section 5, Article II of RA 9165, pertinently reads:

¹ See Notice of Appeal dated October 4, 2016, *rollo*, pp. 15-16.
² *Rollo*, pp. 2-14. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion, concurring.
³ *CA rollo*, pp. 13-19. Penned by Judge Oscar T. Zaldivar.
⁴ Records, pp. 1-2.

[Signature]

That on or about June 6, 2010[,] in the Municipality of Aparri, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused, CESAR DELA CRUZ Y LIBONAO ALIAS SESI, without authority, did, then and there willfully[,] unlawfully and feloniously sell, deliver, dispense, give away to another and distribute one (1) piece of heat sealed transparent plastic sachet containing crystalline substance scientifically known as methamphetamine hydrochloride, a dangerous drug locally known as SHABU weighing approximately 0.02 [gram] to a PDEA poseur buyer who acted as a poseur buyer of the aforesaid dangerous drugs as in fact the said accused was actually caught by PDEA Officers while in the act of selling the above-mentioned dangerous drugs for and in consideration of the amount of PHP1,000.00 in two (2) 500 pesos bill denomination bearing VY236844 and EL 752687 previously marked bills which resulted to the apprehension of the accused and the confiscation from his possession the above-mentioned dangerous drug and the pre[-]marked buy[-]bust money by elements of the PDEA agents as the accused do not have the necessary license, permit and/or authority to sell dangerous drugs.

CONTRARY TO LAW.⁵

When arraigned, Dela Cruz pleaded not guilty to the offense charged.⁶

Version of the Prosecution

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

On June 6, 2010, at about 3:00 o'clock in the afternoon, the Philippine Drug [Enforcement] Agency (PDEA) Office received a phone call from a confidential informant through SO2 Romarico Pagulayan, disclosing that a certain Cesar Dela Cruz alias Sesi is engaged in illegal drug activities at Macanaya, Aparri, Cagayan. SO2 Pagulayan immediately informed the Office-in-Charge, PCI Primitivo C. Bayongan and the latter instructed SO2 Pagulayan to lead a team for a possible buy bust operation. A team was formed and a briefing was conducted. IO2 Vivien A. Molina was designated as the poseur buyer while IO1 Robert Baldoviso was assigned as the immediate back-up. IO2 Molina was given two pieces of five hundred peso bills bearing serial numbers VY236844 and EL 752687 as buy bust money. It was also agreed that the pre[-]arranged signal was for IO2 Molina to ignite her lighter once the transaction was consummated.

At about 4:00 o'clock in the afternoon of the same day, they left the PDEA office, Tuguegarao City and arrived at Aparri, Cagayan around 6 PM of the same day. The team immediately met the confidential informant at a safe place and had a final briefing. During the final briefing, SO2 Pagulayan instructed the confidential informant to tell alias Sesi that he was still waiting for his companion coming from Gonzaga, Cagayan who needed shabu. Cesar Dela Cruz communicated to the confidential informant that they will just meet at his residence once his companion arrived.

⁵ Id. at 1.

⁶ *Rollo*, p. 3.

At 8:30 in the evening, SO2 Pagulayan instructed IO2 Molina and the confidential informant to proceed to the residence of the accused at Zone 3, Macanaya, Cagayan while the immediate back[-]up and the rest of the team secretly followed the two. Upon reaching Zone 3 of Brgy. Macanaya, Aparri, Cagayan, from a distance of more or less two meters, IO2 Molina and the confidential agent saw a man standing along the highway. The confidential agent recognized the said man as Cesar Dela Cruz. The two approached the accused. The poseur[-]buyer, confidential informant and the accused talked briefly. The accused asked IO2 Molina how much shabu she was buying and the latter replied that she needed [shabu] worth one thousand (P1,000.00) pesos only. Upon hearing the amount, accused proceeded to an alley at his residence and got something. When the accused returned, he handed IO2 Molina a small heat sealed transparent plastic sachet while the latter in return handed to the accused two pieces of five hundred (P500.00) peso bills. Upon confirming that the plastic sachet contained shabu, IO2 Molina ignited her lighter prompting her immediate back[-]up and the rest of the team to rush to the place. IO2 Molina introduced herself as [a] PDEA agent and ordered the accused not to move. [T]he accused ran towards his residence and attempted to draw his fan knife, but IO1 Baldoviso was able to disarm him. Baldoviso frisked the accused and recovered from him the buy bust money.

SO2 Romarico Pagulayan apprised the accused of his constitutional rights. The PDEA agents brought the accused including the seized items to the Aparri Police Station for marking and inventory of the confiscated items. The inventory was witnessed by two Barangay officials namely, Barangay Kagawad Anthony Pipo and Barangay Captain Eder Peneyra.

On the same day of June 6, 2010, SO2 Romarico Pagulayan, prepared a memorandum for the laboratory examination of the seized items and the accused. IO2 Molina personally submitted the seized plastic sachet to the PNP Regional Crime Laboratory Office 2, Camp Adduru, Tuguegarao City at 1:00 o'clock in the morning of June 7, 2010.

The contents of one (1) piece heat sealed plastic sachet with marking EXH "A" VAM-06-06-10 was subjected to laboratory examination by Forensic Chemical Officer P/Insp. Glenn Ly Tuazon. The following findings, as recorded in Chemistry Report No. D-21-2010 dated June 7, 2010 discloses:

SPECIMEN SUBMITTED:

A- One (1) heat-sealed transparent plastic sachet with markings EXH "A" VAM-06-06-10 & signature containing 0.02 gram of white crystalline substance.xxx

PURPOSE OF [THE] LABORATORY EXAMINATION:

To determine the presence of dangerous drug/s.xxx



FINDINGS:

Qualitative examination conducted on the above stated specimen gave **POSITIVE** result to the tests for the presence of Methamphetamine hydrochloride, a dangerous drug. x x x

CONCLUSION:

Specimen A contains Methamphetamine hydrochloride, a dangerous drug. x x x

On the other hand, the laboratory examination conducted on the urine specimen taken from the accused gave positive result to the tests for the presence of Methamphetamine, a dangerous drug.⁷

Version of the Defense

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

The defense presented the accused and his son to the witness stand to deny the allegations in the Information and the testimonies of the prosecution witnesses.

The son of the accused, CJ Dela Cruz testified that on June 6, 2010, he and his father went to fetch his mother from the place where she attended a birthday party. When his mother didn't go with them, they went back to their house and had dinner. While having supper, five PDEA agents entered their house, pointed a gun to his father and arrested the latter. They pulled his father leading him outside the house and brought him to the Aparri Police Station.

Accused on the other hand corroborated the testimony of his son and testified further that he was tortured by the PDEA agents for him to disclose the names of personalities involved in the shabu trade at Aparri, Cagayan.⁸

Ruling of the RTC

In the assailed Decision dated September 2, 2013, the RTC ruled that the prosecution's evidence sufficiently established the guilt of the accused beyond reasonable doubt.⁹ The prosecution was able to prove the existence of the two elements required for a successful prosecution for the crime of illegal sale of drugs.¹⁰ It likewise held that the defense interposed by the accused deserves scant consideration as it is self-serving and is not

⁷ CA *rollo*, pp. 14-16.

⁸ Id. at 16-17.

⁹ Id. at 17.

¹⁰ Id. at 17-18.

corroborated by other strong evidence.¹¹ Furthermore, it upheld the presumption of regularity in the performance of official duty by law enforcement agents.¹² Lastly, it held that the accused miserably failed to present any evidence in support of his claim of frame-up and torture.¹³ The dispositive portion of the RTC Decision reads:

WHEREFORE, Premises Considered, the Court finds accused Cesar Dela Cruz y Libonao a.k.a. "Sesi" of Zone 3, Macanaya, Aparri, Cagayan **GUILTY** beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of **LIFE IMPRISONMENT** and fine of Five Hundred Thousand (P500,000.00) Pesos with all the accessory penalties under the law.

The plastic sachet containing *shabu* or methamphetamine hydrochloride (EXH "A" VAM-06-06-10) is hereby ordered confiscated and turned over to the Philippine Drug Enforcement Agency for proper disposition.

Costs de Oficio.

SO ORDERED.¹⁴

Aggrieved, Dela Cruz appealed to the CA.

Ruling of the CA

In the assailed Decision dated September 6, 2016, the CA affirmed Dela Cruz's conviction. The dispositive portion of the Decision reads:

We **DISMISS** the appeal, and **AFFIRM** the Decision dated 2 September 2013 of the Regional Trial Court, Branch 07, Aparri, Cagayan in Criminal Case No. II-10512.

IT IS SO ORDERED.¹⁵

The CA likewise held that the prosecution was able to prove all the elements of illegal sale of drugs.¹⁶ As to the contention of Dela Cruz that the buy-bust team failed to comply with the requirements of Section 21 of RA 9165, the CA ruled that his argument is devoid of merit.¹⁷ It noted that non-compliance with Section 21 does not invalidate the seizure and custody of the seized drugs.¹⁸ Mere lapses in procedure do not invalidate a seizure as

¹¹ Id. 18-19.

¹² Id. at 18.

¹³ Id. at 18-19.

¹⁴ Id. at 19.

¹⁵ *Rollo*, p. 13.

¹⁶ Id. at 8-9.

¹⁷ Id. at 9.

¹⁸ Id. at 11.

long as the apprehending officers are able to successfully preserve the integrity and evidentiary value of the confiscated items.¹⁹ Lastly, it ruled that Dela Cruz's defense of frame-up has no leg to stand on as he failed to overcome the presumption of regularity in the performance of duty on the part of the police.²⁰

Hence, the instant appeal.

Issue

Whether or not Dela Cruz's guilt for violation of Section 5 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 offense²¹ and the fact of its existence is vital to sustain a judgment of conviction.²² It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.²³ 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.²⁴

In this regard, Section 21, Article II of RA 9165,²⁵ the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the

¹⁹ Id.

²⁰ Id. at 12-13.

²¹ *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

²² *Derilo v. People*, 784 Phil. 679, 686 (2016).

²³ *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

²⁴ *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

²⁵ The said section provides:

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[.]

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**; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.²⁶

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.²⁷ **In this connection, this also means that the three 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 enough 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;²⁸ 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.²⁹ It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.³⁰ Without any justifiable explanation, which must be proven as a fact,³¹ 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.³²

²⁶ See RA 9165, Art. II, Sec. 21 (1) and (2).

²⁷ IRR of RA 9165, Art. II, Sec. 21(a).

²⁸ *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁹ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

³⁰ *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³¹ *People v. De Guzman y Danzil*, 630 Phil. 637, 649 (2010).

³² *People v. Gonzales*, 708 Phil. 121, 123 (2013).

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, par. 1 of RA 9165.

First, the arresting officers failed to mark and photograph the seized illegal drug at the place of arrest. Moreover, none of the three required witnesses was present at the time of seizure and apprehension. The Barangay Officials were only “called-in” at the police station. As IO2 Vivien A. Molina (IO2 Molina), the poseur-buyer, herself testified:

Q: At the Aparri Police Station, what happened there?

A: When we were already at the Aparri Police Station including the suspect sir, we conducted the markings on the evidences and inventory the confiscated evidences, we photograph the evidences sir and also the witness[es] are there, sir.

Q: The witness, who are the witness[es] that you are referring to?

A: The Brgy. Chairman and one kagawad, sir.

Q: Who called these Barangay Officials?

A: I was not the one sir, it's the member of [the] team.

Q: So from your account, you conducted a physical inventory and photograph the drugs and other evidences?

A: Yes, sir.

Q: Was a member of the media present at the time of the inventory and photograph taking?

A: Nobody sir because it was late in the night already, sir.³³
(Emphasis supplied)

Second, even more revealing is the fact that Barangay Kagawad Anthony Pipo (Kagawad Pipo), whose signature was affixed on the inventory, did not witness the actual preparation of the inventory and photographing of the seized items, *viz.*:

COURT: So, you affixed your signature to this inventory?

A: Yes, your honor.

Q: Were you present when the inventory was prepared?

A: That was already prepared, your Honor.

Q: That's why the question of the court is, were you present when this was actually prepared?

³³ TSN, August 31, 2010, pp. 21-22.



- A: No, your Honor.
- Q: You were not present. So[,] when you arrived this one was already prepared?
- A: Yes, your Honor.³⁴ (Emphasis supplied)

As to the Barangay Captain who allegedly signed the inventory, he failed to take the witness stand.

Thus, these anomalies in the custodial chain create serious doubt as to the integrity and evidentiary value of the seized illegal drug.

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*,³⁵ 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 vs. Mendoza*,³⁶ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

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

³⁴ TSN, October 19, 2011, pp. 23-24.

³⁵ G.R. No. 228890, April 18, 2018.

³⁶ 736 Phil. 749 (2014).

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.”³⁷

Lastly, the buy-bust team failed to offer any explanation for their failure to strictly comply with the requirements of Section 21.

When IO2 Molina was asked by the Court why there was no media representative present at the time of the conduct of the inventory and photographing of the seized items, she merely answered that it was late in the night already. This explanation is not sufficient to justify the police operatives’ non-compliance with Section 21. Moreover, the barangay officials were merely “called-in” to the police station after the arrest. Time and again, the Court has held that 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.

It bears stressing that the prosecution has the burden of (1) proving 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*:³⁸

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 enforcers from

³⁷ *People v. Tomawis*, supra note 35, at 11-12.

³⁸ G.R. No. 231989, September 4, 2018.

obtaining the presence of the required witnesses even before the offenders could escape.³⁹

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.**⁴⁰ If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the non-compliance with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause.⁴¹ 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.⁴²

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* had been compromised.⁴³ As the Court explained in *People v. Reyes*:⁴⁴

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 x⁴⁵ (Emphasis supplied)

In the present case, the prosecution neither recognized, much less tried to justify or explain, the police officers' deviation from the procedure contained in Section 21. As testified by IO2 Molina herself, they were only able to secure the presence of one of the required witnesses. On the other

³⁹ Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17; emphasis in the original and underscoring supplied.

⁴⁰ RA 9165, as amended by RA 10640, Sec. 21(1).

⁴¹ *People v. Beran*, 724 Phil. 788, 822 (2014).

⁴² *People v. Reyes*, 797 Phil. 671, 690 (2016).

⁴³ *People v. Sumili*, 753 Phil. 342, 352 (2015).

⁴⁴ Supra note 42.

⁴⁵ Id. at 690.

hand, her explanation as to the absence of the other witnesses is but a flimsy excuse. The dubious character of their so-called compliance with the procedure laid out in Section 21 is bolstered even more by the fact that Kagawad Pipo himself admitted that he was not actually present during the preparation of the inventory and he was merely asked by the policemen to sign the accomplished inventory report.

The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Dela Cruz must perforce be acquitted.

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.⁴⁶ 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.⁴⁷

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.⁴⁸ The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.⁴⁹ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.⁵⁰

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. The Court has ruled in *People v. Zheng Bai Hui*⁵¹ that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

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

⁴⁶ CONSTITUTION, Art. III, Sec. 14, par. (2) provides: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

⁴⁷ *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

⁴⁸ *People v. Mendoza*, supra note 36, at 769-770.

⁴⁹ Id.

⁵⁰ *People v. Catalan*, 699 Phil. 603, 621 (2012).

⁵¹ 393 Phil. 68, 133 (2000).

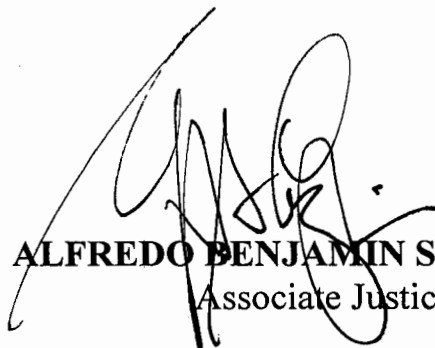
procedure committed by the buy-bust team in the seizure, custody, and handling of the seized illegal drug. In other words, the prosecution was not able to overcome the presumption of innocence of Dela Cruz.

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.⁵²

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 6, 2016 of the Court of Appeals, Sixth Division in CA-G.R. CR-HC. No. 06459 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Cesar Dela Cruz y Libonao** 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.

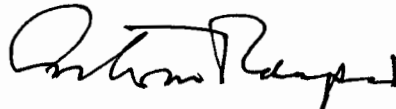
Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

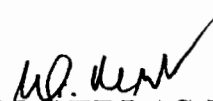
SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁵² *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

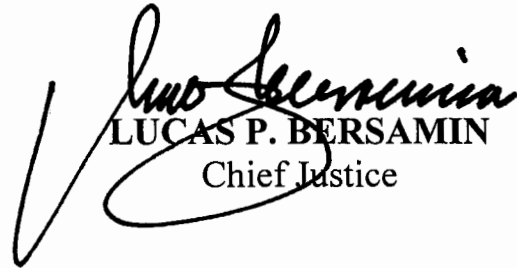
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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

