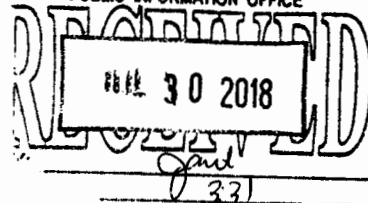




Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 230717

Presents:

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

- versus -

LULU BATTUNG y NARMAR,  
Accused-Appellant.

Promulgated:

20 JUN 2018

X-----X

DECISION

**PERALTA, J.:**

Before us is an appeal from the Decision<sup>1</sup> dated April 14, 2016 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 06053 which affirmed the Decision<sup>2</sup> dated September 29, 2008 of the Regional Trial Court (*RTC*) of Manila, Branch 31, in Criminal Case No. 04-232833 finding appellant Lulu Battung y Narmar guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (*R.A. No. 9165*), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information<sup>3</sup> filed on December 14, 2004, appellant was charged before the *RTC* with violation of Section 5, Art. II of R.A. No. 9165, the accusatory portion of which reads:

<sup>1</sup> Penned by Associate Justice Leoncia Real-Dimagiba, concurred in by Associate Justices Ramon R. Garcia and Josep Y. Lopez; *rollo*, pp. 2-12.

<sup>2</sup> Per Judge Germano Francisco D. Legaspi, Criminal Case No. 04-232833; *CA rollo*, pp. 36-42.

<sup>3</sup> Records, p. 1.

That on or about December 2, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully unlawfully and knowingly sell One (1) heat-sealed transparent plastic sachet with markings "LB" containing ZERO POINT ZERO TWO TWO (0.022) grams, of white crystalline substance, containing methamphetamine hydrochloride known as "shabu" which is a dangerous drug.

Contrary to Law.<sup>4</sup>

Appellant, duly assisted by counsel *de officio*, was arraigned and pleaded not guilty to the charge.<sup>5</sup> Pre-trial and trial thereafter ensued.

The evidence for the prosecution established that at 4:30 in the afternoon of December 2, 2004, a confidential informant (CI) went to the Station Anti-Illegal Drugs Special Operation Task Unit (*SAID-SOTU*) of the Western Police District and reported the illegal drug selling activity of appellant along Bambang Street, Tondo, Manila.<sup>6</sup> SPO2 Rolando del Rosario immediately planned a buy bust operation and formed a team composed of himself, PO3 Ricardo Manansala and PO1 Conrado Juaño who would act as the poseur buyer.<sup>7</sup> SPO2 Del Rosario prepared the buy bust money with his initials "RR."<sup>8</sup> After the pre-operation report and coordination with the Philippine Drug Enforcement Agency (*PDEA*), the buy-bust team, together with the CI, proceeded to Bambang Street on board a car and arrived at the target area at 6:25 in the evening.<sup>9</sup> PO1 Juaño and the CI proceeded towards an alley in Bambang Street, while the other two team members positioned themselves at the sidewalk where they could see the former.<sup>10</sup> A few minutes later, appellant arrived and met with the CI who introduced PO1 Juaño as his friend.<sup>11</sup> Appellant asked PO1 Juaño how much he was buying to which the latter replied, "dos lang".<sup>12</sup> PO1 Juaño handed the two ₱100 bills to appellant who took out from her short pants pocket a plastic sachet containing white crystalline substance and gave it to the former.<sup>13</sup> PO1 Juaño then held appellant's hand, introduced himself as a police officer and placed her under arrest, while the other team members rushed towards them.<sup>14</sup>



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<sup>4</sup> *Id.*  
<sup>5</sup> *Id.* at 13.  
<sup>6</sup> TSN, September 29, 2005, pp. 3-4.  
<sup>7</sup> *Id.* at 5.  
<sup>8</sup> *Id.*  
<sup>9</sup> *Id.* at 7.  
<sup>10</sup> *Id.* at 8; TSN. January 18, 2007, pp. 5-6.  
<sup>11</sup> TSN. January 18, 2007, p. 8  
<sup>12</sup> *Id.*  
<sup>13</sup> *Id.* at 8-9.  
<sup>14</sup> *Id.* at 9-10.

Appellant was apprised of her constitutional rights and was brought to the police station.<sup>15</sup> PO1 Juaño remained in possession of the item bought from appellant and the buy-bust money from the time of the latter's arrest up to the police station. Upon arrival at the station, PO1 Juaño marked the transparent plastic sachet containing the white crystalline substance with "LB"<sup>16</sup> before turning it over to the investigator, PO2 Elimar Garcia, who prepared the request for laboratory examination and the one who delivered the item to the crime laboratory for chemical analysis.<sup>17</sup> Police Senior Inspector (*PSI*) Elisa G. Reyes, Forensic Chemical Officer of the Manila Police District Crime Laboratory, received the plastic sachet with marking "LB" from PO2 Garcia.<sup>18</sup> She conducted an examination and found the white crystalline substance weighing 0.022 grams positive for methamphetamine hydrochloride or shabu. Her finding was embodied in her Chemistry Report No. D-1793-04.<sup>19</sup> She identified her Report and the plastic sachet with marking "LB" in court. PO1 Juaño<sup>20</sup> and SPO2 Del Rosario<sup>21</sup> identified appellant as the seller of shabu and PO1 Juano likewise identified the plastic sachet with his markings.

Appellant denied the charge and claimed that at 6 o'clock in the evening of December 2, 2004, she was at home cooking dinner when she was told by her daughter that Mercy Sacramento was looking for her.<sup>22</sup> She went outside and was talking with Mercy when six armed men in civilian clothes arrived on board a gray colored car and forced her to get inside the car, leaving Mercy in the street.<sup>23</sup> They asked her of the whereabouts of a certain Ruben to which she replied that she did not know, and she was then brought to the police station and detained unless she would give them ₱50,000.00<sup>24</sup> She learned the names of the arresting officers when she saw their name plates in their uniforms the following day.<sup>25</sup> She admitted being arrested in 2003 for illegal possession of drugs but was out on bail.

George Sacramento, son of Mercy, corroborated appellant's testimony that she was conversing with Mercy when policemen arrested her and was dragged towards a van; that he too was frisked by the policemen but Mercy intervened in his behalf.<sup>26</sup> Roberto Reyes, a barangay tanod, testified that while he was walking along Bambang Street, he saw several persons with guns dragging appellant and boarded her in their van; that he did not attempt

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<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 11-15

<sup>18</sup> TSN, March 15, 2006, p. 5.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> TSN, January 18, 2007, pp. 14-15.

<sup>21</sup> TSN, September 29, 2005, p. 12

<sup>22</sup> TSN, April 2, 2007, p 5.

<sup>23</sup> *Id.* at 5-7.

<sup>24</sup> *Id.* at 7-8.

<sup>25</sup> *Id.* at 9.

<sup>26</sup> TSN, November 7, 2007, pp. 3-6.

to help appellant as he heard them said “*walang makikialam*”; and that appellant was talking to Mercy when she was taken.<sup>27</sup>

On September 29, 2008, the RTC issued a Decision,<sup>28</sup> the decretal portion of which reads:

WHEREFORE, PREMISES CONSIDERED, the Court finds accused Lulu Battung y Narmar guilty beyond reasonable doubt of violating Section 5 of RA No. 9165 and hereby sentences her to life imprisonment and to pay a fine of five hundred thousand pesos (P500,000.00).

The Branch Clerk of Court is hereby directed to turn over the shabu subject matter of this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.<sup>29</sup>

The RTC found that the prosecution had clearly established the presence of all the elements of the crime of illegal sale of shabu. It ruled that the defense failed to establish that the police officers were motivated by malice and acted beyond its authority; thus, they are presumed to have performed their duties in a regular manner. Appellant's defense of denial and frame up were rejected.

On April 14, 2016, the CA dismissed the appeal and affirmed *in toto* the RTC decision.

The CA echoed the RTC findings that all the elements of illegal sale of shabu were duly proved. It also found that the failure of the arresting officers to comply with Section 21 of R.A. No. 9165 will not render an arrest illegal or the seized items inadmissible in evidence since what is crucial is that the integrity and evidentiary value of the seized items were preserved, which the prosecution had established in this case. The CA also rejected appellant's defense of frame up as there was no showing that there was bad blood between her and the police officers. The inconsistencies referred to by appellant, such as who prepared the pre-operation report, referred to minor details which was not in actuality touching upon the central fact of the crime.

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<sup>27</sup> TSN, February 13, 2008, pp. 3-6.

<sup>28</sup> Per Judge Germano Francisco D. Legaspi, Criminal Case No. 04-232833; CA *rollo*, pp. 36-42.

<sup>29</sup> *Id.* at 42.

Appellant filed a notice of appeal which was given due course by the CA. We then required the parties to file their respective supplemental briefs, if they so desire. Both parties filed their Manifestations dispensing with the filing of supplemental briefs and adopt the respective briefs they filed with the CA.

Appellant argues that her guilt was not proved beyond reasonable doubt. The presumption of regularity in the performance of duties is inapplicable in this case on account of the police officers' failure to observe the proper procedure in preserving the chain of custody as required under Section 21 of R.A. No. 9165.

We find merit in the appeal.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.<sup>30</sup> The existence of *corpus delicti* is essential to a judgment of conviction.<sup>31</sup> Hence, the identity of the dangerous drug must be clearly established.

Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

Section 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 or 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 persons/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; x x x (Emphasis supplied)

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules

<sup>30</sup> *People v. Morales y Midarasa*, 630 Phil 215, 228 (2010).

<sup>31</sup> *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19, 28.



and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed.<sup>32</sup>

- (a) The apprehending officer/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: *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, further, that non-compliance with 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 of and custody over said items.***<sup>33</sup>

It is not amiss to state that R.A. No. 10640,<sup>34</sup> which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that “while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government’s campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts.”<sup>35</sup> Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that “compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is

<sup>32</sup> *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

<sup>33</sup> Emphasis ours.

<sup>34</sup> “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.’”

<sup>35</sup> Senate Journal, Session No. 80, 16<sup>th</sup> Congress, 1<sup>st</sup> Regular Session, June 4, 2014, p. 348.

difficult to get the most grassroots-elected public official to be a witness as required by law.”<sup>36</sup>

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for “certain adjustments so that we can plug the loopholes in our existing law” and ensure [its] standard implementation.”<sup>37</sup> Senator Sotto explained why the said provision should be amended:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.

x x x x

Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase “justifiable grounds.” There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation

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

<sup>37</sup> *Id.*

conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.<sup>38</sup>

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”<sup>39</sup>

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.<sup>40</sup> Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.<sup>41</sup> Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.<sup>42</sup>

An examination of the records showed that the prosecution totally failed to comply with the procedures outlined under Section 21 of R.A. No. 9165. The testimony of PO1 Juaño revealed such non-compliance, to wit:

Q. After you captured the specimen from the accused, did you conduct inventory at the scene that time?

A. No sir, only in our office.

Q. No photograph during the time the accused was arrested?

A. None sir.

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<sup>38</sup> *Id.* at 349-350.

<sup>39</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017,

<sup>40</sup> *People v. Miranda, Id.*; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

<sup>41</sup> *People v. Saragena*, G.R. No. 210677, August 23, 2017

<sup>42</sup> *Id.*





Q. There were no representatives from the press/media or any from the government that time?

A. None sir.

Q. After you captured the specimen from the accused, you brought it to the station?

You only caused the markings in your police station?

A. Yes sir.<sup>43</sup>

Admittedly, there was no physical inventory of the seized item. Without such inventory, a doubt is created whether the shabu was really taken from appellant. There were also no photographs taken of the inventory in the presence of appellant or his representative or counsel and the required witnesses under Section 21 of R.A. No. 9165, to wit: a representative from the media and the Department of Justice (*DOJ*), and any elected public official. In fact, it was not established at all that the police officers exerted any effort to secure the presence of the required witnesses. The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.<sup>44</sup> The insulating presence of such witnesses would have preserved an unbroken chain of custody.<sup>45</sup> The marking of the seized item by PO1 Juaño at the police station is not sufficient to establish the chain of custody. It has been held that the mere marking of the seized item without the required physical inventory and photographs of the same in the presence of the witnesses mentioned under Section 21 was not enough compliance with the law.<sup>46</sup>

While the last paragraph of Section 21(a) of the IRR of R.A. No. 9165 provides that non-compliance with the requirements of Section 21 will not render void and invalid the seizure and custody of the seized items, it was made clear that this is so under justifiable ground and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. In other words, the procedural lapse must first be acknowledged and adequately explained. We held that the justifiable ground for non-compliance must be proven as a fact as the Court cannot presume what these grounds are or that they even exist.<sup>47</sup> Here, we find nothing on record of any explanation proffered by the prosecution for the procedural lapse.

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a**

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<sup>43</sup> TSN, January 18, 2007, pp. 26-27.

<sup>44</sup> *People v. Mendoza*, 736 Phil. 749, 761-762 (2014).

<sup>45</sup> *Id.* at 764.

<sup>46</sup> *People v. Garcia*, 599 Phil. 416 (2009).

<sup>47</sup> *People v. De Guzman y Danzil*, 630 Phil. 637, 649 (2010).

**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<sup>48</sup> of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

To stress, while We had made rulings in the past that failure to strictly comply with the statutory safeguards in the conduct of a buy-bust operation will not render the seized items inadmissible in evidence provided the integrity and the evidentiary value of the seized items have been preserved,<sup>49</sup> We find it imperative for the prosecution to show the courts that the non-compliance with the procedural safeguards provided under Section 21 of R.A. No. 9165 was not consciously ignored. Well-settled is that the procedure in section 21 of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>50</sup>

Moreover, we held in *People v. Holgado*<sup>51</sup> that considering the miniscule amount of the drug seized, there is a need to be more compliant with the requirements of Section 21 of R.A. No. 9165. Here, only 0.022 grams of shabu were seized from appellant; thus, the exacting standards under the law become more important.

The presumption of regularity in the performance of duty of the arresting officers as found by the RTC and the CA finds no application in this case. Such presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally-enshrined right to be presumed

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<sup>48</sup> Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

<sup>49</sup> *People v. Salvador, et al.*, 726 Phil. 389 (2014); *People v. Imson*, 669 Phil. 262 (2011).

<sup>50</sup> *People v. Geronimo*, G.R. No.225500, September 11, 2017.

<sup>51</sup> G.R. No. 207992, August 11, 2014, 732 SCRA 554, 556.



innocent.<sup>52</sup> In this case, the police officers' failure to observe the chain of custody rule without any explanation negates the presumption. Since a serious doubt was created on the integrity and the identity of the *corpus delicti*, consequently, there is a failure to establish an element of the crime of illegal sale of dangerous drugs, and so appellant must be acquitted.

At this point, it is not amiss for the *ponente* to express his position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, the *ponente* agrees with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*<sup>53</sup> that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

The *ponente* subscribes to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

The *ponente* further submits that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165, to wit:**

**Section 29. Criminal Liability for Planting of Evidence.** – Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

**Section 32. Liability to a Person Violating Any Regulation Issued by the Board.** – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand

<sup>52</sup> *People v. Mendoza*, *supra* note 43, at 770.

<sup>53</sup> G.R. No. 202206, March 5, 2018.


pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

On a final note, the burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.<sup>54</sup> For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from appellant, and to prove as a fact any justifiable reason for non-compliance with Section 21 of R.A. No. 9165 and its IRR, appellant must be acquitted of the crime charged.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated April 14, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06053 is hereby **REVERSED** and **SET ASIDE**. Appellant Lulu Battung y Narmar is accordingly **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to immediately cause the release of appellant from detention, unless she is being held for some other lawful cause, and to inform this Court his action hereon within five (5) days from receipt of this Decision.

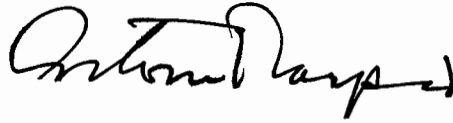
**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice


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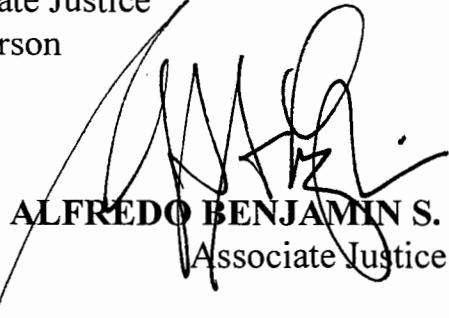
<sup>54</sup> *People v. T/Sgt. Angus, Jr.*, 640 Phil. 552, 566 (2010).

**WE CONCUR:**



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson

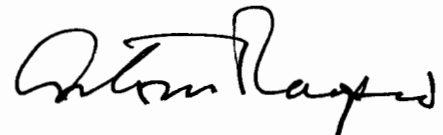
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, Republic  
Act No. 296, The Judiciary  
Act of 1948, as amended