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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 231983

- versus -

Present:

CRISPIAN MERCED LUMAYA
a.k.a. "IPYANG", and **DEREK**
JOSEPH LUMAYA,

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

Accused,

CRISPIAN MERCED LUMAYA
a.k.a. "IPYANG",
Accused-Appellant.

Promulgated:

07 MAR 2018

x-----*Atty. Cabalag/Perfetto*-----x

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal¹ filed by accused-appellant Crispian Merced Lumaya a.k.a. "Ipyang" (Crispian) assailing the Decision² dated September 14, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01846, which affirmed the Joint Judgment³ dated March 23, 2014 of the Regional Trial Court of Negros Oriental, Branch 30 (RTC) in Criminal Case Nos. 21618, 21622, and 21623, finding Crispian guilty beyond reasonable doubt of violating Sections 5, 11, and 12, respectively, of Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

* Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

¹ See Notice of Appeal dated October 7, 2016; *rollo*, p. 17.

² Id. at 4-16. Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos and Geraldine C. Fiel-Macaraig concurring.

³ CA *rollo* at 73-92. Penned by Judge Rafael Crescencio C. Tan, Jr.

⁴ Entitled "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," approved on June 7, 2002.

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The Facts

In an Information⁵ dated March 20, 2013, Crispian and his co-accused Derek Joseph Lumaya (Derek; collectively, the accused) were charged of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165, before the RTC, the accusatory portion of which reads:

Criminal Case No. 21618

That on or about the 4th day of March, 2013, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring together and mutually aiding one another not being then authorized by law, did, then and there willfully, unlawfully and criminally sell and/or deliver to a poseur buyer one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called “shabu[,”] a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. 9165.⁶

Crispian was likewise charged in two (2) separate Informations⁷ dated March 20, 2013 of the crimes of Illegal Possession of Drugs and of Drug Paraphernalia, respectively defined and penalized under Sections 11 and 12, Article II of RA 9165, to wit:

Criminal Case No. 21622

That on or about the 4th day of March, 2013, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess ten (10) heat-sealed transparent plastic sachets containing a total aggregate weight of 20.44 grams of Methamphetamine Hydrochloride, commonly called “shabu,” a dangerous drug.

That the accused is found positive for use of Methamphetamine, as reflected in Chemistry Report No. DT-023/024-13.

Contrary to Section 11, Article II of R.A. 9165.⁸

Criminal Case No. 21623

That on or about the 4th day of March, 2013, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and

⁵ Records, pp. 5-6.

⁶ Id. at 5.

⁷ Id. at 59-60 and 122-123. See also Amended Information for Criminal Case No. 21622 dated April 3, 2013; id. at 115-116.

⁸ Id. at 115.

there willfully, unlawfully and feloniously possess or have under his control the following items[,] to wit:

One (1) piece Scissor[s]
Two (2) pieces rolled tin foil
Two (2) pieces elongated tin foil
One (1) piece lighter
One (1) piece improvised bamboo clip

which are equipmen[t], instruments, apparatus or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body[.]

Contrary to Section 12, Art. II of R.A. 9165.⁹

The prosecution alleged that a tip was received by the Philippine National Police (PNP) - Dumaguete Station that a certain “Ipyang”, who was later identified as Crispian, was peddling illegal drugs in San Jose Extension, Barangay Taclobo, Dumaguete City (Taclobo). Acting on the said tip, the police operatives successfully conducted a test-buy operation at his house in Taclobo at around 10:00 o’clock in the morning of February 26, 2013. The following day, they applied for a search warrant – which was likewise issued on the same day – before the Regional Trial Court of Dumaguete City, Branch 40 (subject warrant). Meanwhile, at around 9:00 o’clock in the evening of March 4, 2013, a confidential informant (informant) reported to the police officers of the PNP - Dumaguete Station that Crispian was again selling illegal drugs at his house. Despite the standing subject warrant, a buy-bust operation was organized in coordination with the Philippine Drug Enforcement Agency.¹⁰

Thus, at around 11:40 in the evening, the buy-bust team, together with the informant, proceeded to the target area in Barangay Motong. When the accused arrived, Derek immediately asked the informant how much *shabu* he would be buying, to which the informant replied that it was Police Officer I Harry Dumaguit (PO1 Dumaguit), the designated poseur-buyer, who wanted to purchase ₱500.00 worth of *shabu*. Crispian then pulled out one (1) sachet of *shabu* and gave it to PO1 Dumaguit, who, in turn, handed over the ₱500.00 buy-bust money. After examining the sachet of *shabu*, PO1 Dumaguit declared his authority as a police officer, prompting Crispian to run away. However, the other police operatives rushed towards the accused and arrested them.¹¹ A body search was then conducted, and ten (10) additional sachets of suspected *shabu* were recovered from Crispian’s possession. Instead of marking the drugs upon seizure, the team decided to execute the subject warrant and went to the house of Crispian. Thereat, several drug paraphernalia were found and confiscated.¹² Shortly after, PO1 Dumaguit conducted the requisite marking and inventory of all the seized

⁹ Id. at 122.

¹⁰ See CA *rollo*, p. 75-76.

¹¹ See id. at 76.

¹² See id. at 77.

items in the presence of the accused, as well as an elected public official and representatives from the Department of Justice (DOJ) and media.¹³ Concurrently, Police Officer 2 Xandro Paclauna (PO2 Paclauna) took photos, apparently showing eighteen (18) sachets of shabu.¹⁴ After the operation, the team went back to the police station and prepared the letter-request for laboratory examination.¹⁵ Subsequently, PO1 Dumaguit brought the said letter-request, together with only eleven (11) seized sachets of *shabu*, to the PNP Negros Oriental Crime Laboratory, where they were received by Police Chief Inspector Josephine Llana (PCI Llana).¹⁶ PCI Llana then examined and confirmed that the same contained *methamphetamine hydrochloride*, a dangerous drug.¹⁷

For their part, the accused interposed the defense of denial. Derek alleged that at around 8:00 o'clock in the evening of March 4, 2013, he was in the house of his live-in partner when he received a text message from his cousin, Crispian, inviting him for dinner. At around 9:30 o'clock that same evening, he fetched Crispian and proceeded to Nilo's *tocino* joint on a motorcycle. After dinner, the accused were on their way to the house of Crispian's friend in Candau-ay, Dumaguete City when it started to rain; they decided to let the rain pass at the house of Crispian's other friend in Barangay Motong. When the rain stopped, they then proceeded to Candau-ay, and on the way Derek saw a drunk man wobbling on the road, so he stopped the motorcycle. The man, however, suddenly grabbed him, introduced himself as a police officer, and took out a gun. Crispian attempted to escape, but the other police officers arrived, fired their guns, and accosted him. They then arrested the accused and effected a body search on them. Subsequently, they all went to Crispian's house to execute the subject warrant and conduct an inventory.¹⁸ According to the accused, they were not informed that the said inventory was a result of the buy-bust operation and/or implementation of the subject warrant.¹⁹ Thereafter, they were brought to the police station.

The accused entered a plea of "not guilty" upon arraignment.²⁰ However, only Derek testified for the defense, while Crispian, through counsel, waived his right to present evidence.²¹

¹³ See *id.*

¹⁴ TSN, January 22, 2014, pp. 31-32.

¹⁵ *CA rollo*, p. 78.

¹⁶ *Id.*

¹⁷ *Id.* at 79. See also Chemistry Report No. D-040-13 dated March 5, 2013; records, p. 32.

¹⁸ *Rollo*, pp. 7-8. See also *CA rollo*, pp. 80-81.

¹⁹ *CA rollo*, p. 81.

²⁰ *Rollo*, p. 6.

²¹ See *CA rollo*, p. 79.

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The RTC Ruling

In a Joint Judgment²² dated March 23, 2014, the RTC found the accused guilty as charged, and accordingly, sentenced them as follows: (a) in Crim. Case No. 21618, the accused were sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of ₱500,000.00 each; (b) in Crim. Case No. 21622, Crispian was sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of ₱500,000.00; and (c) in Crim. Case No. 21623, Crispian was sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and ordered him to pay a fine of ₱10,000.00.²³ It found that the prosecution duly established with moral certainty all the essential elements of the crimes charged.²⁴ On the contrary, it did not give credence to Derek's uncorroborated defense of denial in light of the positive and credible testimonies of the prosecution witnesses. Moreover, Crispian failed to overcome the presumption of regularity afforded to police officers, as he waived his right to present any evidence thereto.²⁵

Aggrieved, the accused appealed²⁶ to the CA.

The CA Ruling

In a Decision²⁷ dated September 14, 2016, the CA affirmed the convictions of the accused, holding that the prosecution competently established an unbroken chain of custody of the dangerous drugs.²⁸ It ruled that the integrity and evidentiary value of the seized drugs were preserved, as it was shown that PO1 Dumaguit had exclusive custody of the same from the time they were confiscated from the accused until they were brought to the crime laboratory for testing. In fact, he was able to positively identify them in court as the same drugs recovered from the accused.²⁹

Furthermore, the CA held that the belated marking of the seized drugs was warranted, since the police officers feared that the accused's companions might escape and that the contraband stored in Crispian's house would disappear.³⁰

Only Crispian filed the instant appeal.

²² Id. at 73-92.

²³ Id. at 90-91.

²⁴ See id. at 81-86.

²⁵ See id. at 86-90.

²⁶ See Brief for Accused-Appellant Crispian Merced Lumaya dated January 14, 2015 (id. at 53-71) and Brief for Accused-Appellant Derek Joseph Lumaya dated December 29, 2014 (id. at 107-121).

²⁷ *Rollo*, pp. 4-16.

²⁸ See id. at 13-15.

²⁹ See id. at 14.

³⁰ Id.

The Issue Before the Court

The issue for the Court's resolution is whether or not Crispian's conviction should be upheld.

The Court's Ruling

The appeal is meritorious.

Prefatorily, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.³¹ The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.³²

Here, Crispian was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, as well as Illegal Possession of Drug Paraphernalia, respectively defined and penalized under Sections 5, 11, and 12, Article II of RA 9165. Case law states that in every prosecution for Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.³³ Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the necessary elements thereof, to wit: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.³⁴ And finally, to properly secure the conviction of an accused charged with Illegal Possession of Drug Paraphernalia, the prosecution must show: (a) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (b) such possession is not authorized by law.³⁵

In all these instances, it is essential that the identity of the prohibited drugs and/or drug paraphernalia be established beyond reasonable doubt, considering that the prohibited drug and/or drug paraphernalia form an integral part of the *corpus delicti* of the crime/s. The prosecution has to show an unbroken chain of custody over the dangerous drugs and/or drug paraphernalia. Thus, in order to obviate any unnecessary doubts on the

³¹ See *People v. Dahil*, 750 Phil. 212, 225 (2015); citation omitted.

³² See *People v. Comboy*, G.R. No. 218399, March 2, 2016, 758 SCRA 512, 521; citation omitted.

³³ See *People v. Sumili*, 753 Phil. 342, 348 (2015).

³⁴ See *People v. Bio*, 753 Phil. 730, 736 (2015).

³⁵ See *People v. Mariano*, 698 Phil. 772, 785 (2012); citation omitted.

identity of the dangerous drugs and/or drug paraphernalia on account of switching, “planting,” or contamination of evidence, the prosecution must be able to account for each link of the chain from the moment of seizure up to presentation in court as evidence of the *corpus delicti*.³⁶

In this regard, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.³⁷ Under the said section, prior to its amendment by RA 10640,³⁸ the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.³⁹

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.⁴⁰ In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640⁴¹ — provide that the said inventory and photography may be

³⁶ See *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

³⁷ See *People v. Sumili*, supra note 33, at 349-350.

³⁸ Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,’” approved on July 15, 2014.

³⁹ See Section 21 (1) and (2), Article II of RA 9165.

⁴⁰ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

⁴¹ Section 1 of RA 10640 reads:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”, is hereby amended to read as follows:

“SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

“(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. x x x x”

conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**⁴² In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.⁴³ In *People v. Almorfe*,⁴⁴ **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**⁴⁵ Also, in *People v. De Guzman*,⁴⁶ it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**⁴⁷

While it appears that the apprehending officers in this case did conduct a physical inventory and photography of the drugs allegedly seized from the accused, it is, nonetheless, baffling that the number of sachets shown in the photographs taken (*i.e.*, eighteen [18]) do not correspond with the number of sachets for which the accused, as per the subject Informations and inventory report,⁴⁸ were herein charged (*i.e.*, eleven [11]). This discrepancy – if left unaccounted for – clearly renders suspect the integrity and evidentiary value of the seized drugs because not only would it be difficult to determine the actual identity of the drugs for which the accused are charged (that is, which eleven [11] among the eighteen [18] sachets displayed in the photos taken were the charges based on), but a numerical variance would also arouse suspicions of planting and/or switching. Indeed, when the law requires that the drugs be physically inventoried and photographed immediately after seizure, it follows that the drugs so inventoried and photographed should – as a general rule – be the self-same drugs for which the charges against a particular accused would be based. The obvious purpose of the inventory and photography requirements under the law is precisely to ensure that the identity of the drugs seized from the accused are the drugs for which he would be charged. Any discrepancy should therefore be reasonably explained; otherwise, the regularity of the entire seizure procedure would be put into question.

⁴² See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

⁴³ See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

⁴⁴ 631 Phil. 51 (2010).

⁴⁵ See *id.* at 60; citation omitted.

⁴⁶ 630 Phil. 637 (2010).

⁴⁷ *Id.* at 649.

⁴⁸ See Receipt/Inventory of Property Seized Form dated March 5, 2013; records, p. 22.

During trial, PO2 Paclauna was questioned about the variance between the number of drug sachets in the photos taken and the number of sachets reflected in the Informations and examined by the chemist. Unfortunately, he failed to give any tenable explanation therefor:

COURT: You were the one who took these photographs?

PO2 Paclauna: Yes, sir.

Q: Which of these items are the, [sic] point to me where is the sachet being sold by the accused here?

A: I can't say, sir, which.....

Q: Which one? You were supposed to take photographs of the items being bought or seized? Where are the seized items and the bought items, which one?

A: I could not see clearly, sir, the "kuan", sir.

Q: You cannot tell which one is the...?

A: I cannot clearly see, sir.

Q: So it is possible that the bought item is not here?

A: I do not know, sir.

Q: There's no photograph of the bought item here? How about these, are these the seized items, all of these?

A: Yes, sir.

Q: How many items were seized?

A: I do not know, sir.

Q: You do not know?

A: Yes, sir.

Q: **The chemist examined eleven (11) sachets, are there eleven (11) sachets here? There are eighteen (18) sachets, how come there are eighteen (18) sachets in the picture? The accused is charged with how many? Possession?**

Pros. Montenegro

Possession – Section 11, Section 12, and Section 5.

x x x x⁴⁹ (Emphasis and underscoring supplied)

⁴⁹ TSN, January 22, 2014, pp. 31-32.

In addition, the photos do not display the drug paraphernalia supposedly recovered during the execution of the subject warrant in Crispian's house. Accordingly, it is difficult to believe that the seized drug paraphernalia were lawfully recovered from Crispian's house, as there were no photos to support the same. The records of this case show that the lower court had, in fact, noted such absence. But all the same, the prosecution failed to give a credible excuse therefor:

COURT: Ten (10) sachets, one (1) piece scissor, two (2) pieces rolled tin foil, two (2) pieces elongated tin foil, one (1) lighter, where are these items in the picture? Where are the tin foils here, pair of scissors? Lighter, where is the lighter here? Where in the picture? You cannot see a lighter. Okay, you are discharged.⁵⁰ (Underscoring supplied)

Furthermore, it deserves mentioning that the police officers also failed to observe the proper procedure in marking the seized items.

According to case law, “[t]he first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. **The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference.** Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**”⁵¹ To note, “[m]arking upon immediate confiscation has been interpreted to include **marking at the nearest police station, or x x x the office of the apprehending team.**”⁵²

In this case, it is undisputed that the police officers did not immediately mark the sachets of *shabu* at the place of confiscation during the buy-bust operation or at the nearest police station. Instead, they proceeded to the house of Crispian to implement the subject search warrant and only thereafter, conducted the marking. To justify the deviation, they proffered that that they could not “allow [the accused’s] companions to escape and bring the possible huge amount of *shabu*.”⁵³ Thus, they marked the items “only after the search of the house of the parents of Crispian.”⁵⁴

⁵⁰ Id. at 32.

⁵¹ See *People v. Ismael*, G.R. No. 208093, February 20, 2017.

⁵² *People v. Rafols*, G.R. No. 214440, June 15, 2016, 793 SCRA 638, 649.

⁵³ TSN, January 2, 2014, p. 60.

⁵⁴ Id.

However, PO1 Dumaguit himself admitted that the actual marking of drugs would only take a short time, particularly less than five (5) minutes. He likewise mentioned that there were around nine (9) to ten (10) police operatives at the scene, to wit:

Q: And along with you in this operation, Officer Dumaguit, how many law enforcers were with you?

A: All the Dumaguete City Intel personnel sir.

Q: Around how many sir?

A: Around nine (9) or 10.

x x x x⁵⁵

Q: Officer, how long did it take you to just mark the buy bust item just to put the initial of the person arrested, (sic) the date? How long do you (sic) usually take you to mark the items?

A: It depends sir.

Q: I am not referring to the inventory. I am just referring to the marking of the item.

A: It will just take a short time sir.

Q: In less than a minute?

A: It's not possible sir because we still have to take the tape, ballpen, and [sic]

Q: Less than five (5) minutes?

A: Yes sir.

x x x x⁵⁶ (Underscoring supplied)

If the police officers themselves admitted that the marking would only take less than five (5) minutes, and that there were around nine (9) to ten (10) police companions to secure the same, then there appears to be no appreciable reason as to why the marking could not have been made immediately after the drugs sachets were seized. By the police officers' own account, this short period of time would have barely affected their impending implementation of the subject warrant. More so, it was not claimed that the safety of the police officers would have been prejudiced if the marking was done at the place of seizure. Hence, the police officers were not justified in not following the procedure set in the law. To reiterate, "[t]he rule requires that [marking] should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they

⁵⁵ Id. at 56.

⁵⁶ Id. at 60.

are the same items that enter the chain and are eventually the ones offered in evidence.”⁵⁷

By and large, the breaches of procedure committed by the police officers 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.⁵⁸ It is well-settled that the procedure in Section 21 of RA 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.⁵⁹ Perforce, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, Crispian’s acquittal is in order.

Notably, the acquittal of Crispian on account of the police officers’ failure to comply with the chain of custody rule should likewise result in the acquittal of his co-accused, Derek. This is because Derek was charged in Criminal Case No. 21618 for the alleged illegal sale of “one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly known as “*shabu*[,]” a dangerous drug”; this sachet is the same sachet for which Crispian was charged also in Criminal Case No. 21618, and hence, part of the seized items whose integrity and evidentiary value had been compromised. Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure, as amended, states that:

Section 11. *Effect of appeal by any of several accused.* —
(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter. (Underscoring supplied)

While it is true that it was only Crispian who successfully perfected his appeal, the rule is that an appeal in a criminal proceeding throws the entire case out in the open, including those not raised by the parties.⁶⁰ Considering that under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure as above-quoted, a favorable judgment – as in this case – shall benefit the co-accused who did not appeal,⁶¹ Derek should likewise be acquitted herein.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

⁵⁷ *Valencia v. People*, 725 Phil. 268, 285 (2014); citation omitted.

⁵⁸ See *People v. Sumili*, supra note 33 at 352.

⁵⁹ See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

⁶⁰ See *Benabaye v. People*, 755 Phil. 144, 157 (2015); citation omitted.


⁶¹ *Id.*

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.


Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.⁶²


WHEREFORE, the appeal is **GRANTED**. The Decision dated September 14, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01846 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Crispian Merced Lumaya a.k.a. “Ipyang” and his co-accused Derek Joseph Lumaya are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

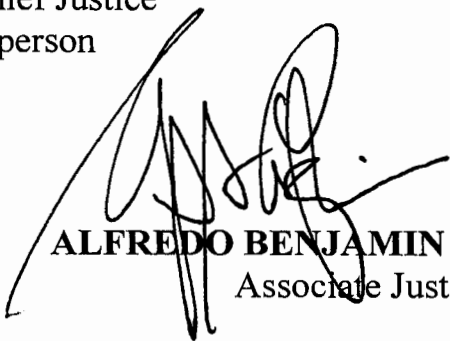
SO ORDERED.


ESTELA M. BERLAS-BERNABE
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Acting Chief Justice
 Chairperson


DIOSDADO M. PERALTA
 Associate Justice

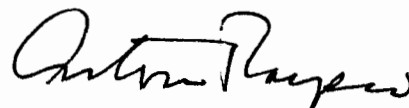

ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


ANDRES B. REYES, JR.
 Associate Justice

⁶² *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

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
Acting Chief Justice
Chairperson