



Republic of the Philippines  
**Supreme Court**  
 Baguio City

**SECOND DIVISION**

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

**G.R. No. 219852**

Present:

CARPIO, J., Chairperson,  
 PERLAS-BERNABE,  
 CAGUIOA,  
 J. REYES, JR.,\* and  
 LAZARO-JAVIER, JJ.

- versus -

**DAVE CLAUDEL y LUCAS,**  
 Accused-Appellant.

Promulgated:

**03 APR 2019**

*DM Cabalag/projects -x*

x-----

**DECISION**

**CAGUIOA, J.:**

This is an Appeal<sup>1</sup> under Section 13(c), Rule 124 of the Rules of Court from the Decision<sup>2</sup> dated October 22, 2014 of the Court of Appeals, Twelfth (12<sup>th</sup>) Division (CA) in CA-G.R. CR-HC. No. 05973, which affirmed the Decision<sup>3</sup> dated October 31, 2012 rendered by the Regional Trial Court, Branch 204, Muntinlupa City (RTC) in Criminal Case No. 09-149, which found herein accused-appellant Dave Claudel y Lucas (Dave) 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 Information filed against Dave for violation of Section 5, Article II of RA 9165 pertinently reads:

\* On wellness leave.

<sup>1</sup> See Notice of Appeal dated November 6, 2014; *rollo*, p. 17.

<sup>2</sup> Id. at 2-16. Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Japar B. Dimaampao and Elihu A. Ybañez concurring.

<sup>3</sup> CA *rollo*, pp. 69-79. Penned by Presiding Judge Juanita T. Guerrero.

That on or about the 26<sup>th</sup> day of February, 2009, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another a (sic) Methamphetamine hydrochloride, a dangerous drug, contained in one (1) heat-sealed transparent plastic sachet weighing 0.04 gram, in violation of the above-cite [sic] law.

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

When arraigned, Dave pleaded not guilty to the offense charged.<sup>5</sup>

### *Version of the Prosecution*

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

The prosecution presented its witnesses, [PO2] Rondivar Hernaez ([PO2 Hernaez]) and [PO1] Bob Yangson ([PO1 Yangson]), a member of the buy-bust team. Their combined testimonies established the following facts:

On 26 February 2009, a buy-bust operation was conducted by the operatives of Station Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG) Muntinlupa Police following a report that a certain Dave Claudel (“Dave”) is engaged in illegal drug activities. Prior to the buy-bust operation, Dave was also previously arrested for [v]iolation of RA 9165 involving illegal drugs.

In preparation for the buy-bust-operation [sic], the buy-bust team prepared the Pre-Operational Sheet and Coordination Sheet which they faxed to the Philippine Drug Enforcement Agency (PDEA). In turn, the buy-bust team received a Certificate of Coordination from PDEA.

Team Leader, Chief Inspector Paningbatan assigned [PO2] Hernaez as the poseur[-]buyer while PO1 Yangson was designated as the immediate back up. C/Insp. Paningbatan handed [PO2] Hernaez a Five Hundred Peso Bill buy-bust money on which the latter wrote his initials “RH” on the lower right portion of the bill. It was agreed upon that [PO2] Hernaez will light a cigarette as a pre-arranged signal that the sale of illegal drugs was consummated.

[PO2] Hernaez admitted that he was already familiar with Dave as he used to see him in court hearings. However, he was not aware whether Dave could also remember him. At any rate, to prevent being recognized, [PO2] Hernaez wore a disguise by changing his clothes. He wore a gray polo shirt, maong pants, leather shoes and a cap to cover his face. He also needed an asset to accompany him as Dave would not sell drugs to anyone except those known to him.

At around 9:30 o’clock [sic] in the evening, the team proceeded to the target place in Tuazon Street, Barangay Poblacion. As planned, [PO2] Hernaez together with the asset walked towards Tuazon Street corner Rizal Street where it was dark and there was no light. The asset pointed [to] alias Dave as the person selling illegal drugs. Upon seeing each other, the asset

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<sup>4</sup> Rollo, p. 3.

<sup>5</sup> Id.

noded to Dave. The asset then introduced [PO2] Hernaez to Dave as his kumpare from Parañaque who is interested in buying shabu as there was scarcity of shabu in Parañaque. Dave asked them how much would they buy from him to which [PO2] Hernaez replied, “Php500.00, pare.” Dave reached into the secret pocket of his maong pants and told [PO2] Hernaez, “*Tamang-tama pare huling kasa ko na lang 'to pauwi na rin ako*”. [PO2] Hernaez handed Dave the buy-bust money while Dave handed him a transparent plastic sachet containing white crystalline substance. After examining the plastic sachet, [PO2] Hernaez lit his cigarette. [PO1] Yangson, the assigned back-up of [PO2] Hernaez immediately rushed to the scene and assisted in arresting Dave.

After informing Dave of his rights, [PO2] Hernaez and the rest of the buy-bust team brought Dave to their office where they recovered from him the buy-bust money. The plastic sachet remained in [PO2] Hernaez’s custody until they reached their office. Upon arriving thereat, [PO2] Hernaez placed the marking “DC” on the seized plastic sachet. They conducted an Inventory of the seized item in the presence of Dave and Rodolfo Baldobino, DAPCO representative.

[PO2] Hernaez explained that they contacted a representative from the media and the barangay but they received a negative reply as it was already around 10:00 or 11:00 o’clock in the evening. Photographs of Dave, the buy-bust team, and the confiscated items were also taken. They also prepared a Request for Laboratory Examination which [PO2] Hernaez and [PO1] Yangson submitted to the Crime Laboratory. [PO2] Hernaez also took custody of the seized item and submitted the same to the Custodian in the Crime Laboratory.

Afterwards, [PO2] Hernaez came to know that the result of the Laboratory Examination yielded positive for methamphetamine hydrochloride. Thereafter, they executed a Joint Affidavit, a Booking Sheet and Spot Report of the incident.<sup>6</sup>

### *Version of the Defense*

On the other hand, the defense’s version, as summarized by the CA, is as follows:

The defense presented as its witnesses, the accused himself, Dave Claudel, Ligaya Santos and Emmerlyn Arellano [(Emmerlyn)]. Their combined testimonies narrate the following facts:

On 26 February 2009 at about 6:00 o’clock in the evening in P. Tuazon Street, Poblacion, Muntinlupa City, Dave Claudel was fetching water near the store of his sister, Ligaya Santos (“Ligaya”). Ligaya was manning her store with her employee, Emmerlyn Arellano, when more or less six (6) armed men with guns and handcuffs arrived. Dave eventually came to know that the [*sic*] two (2) of these men were police officers [PO1] Yangson and [PO2] Hernaez. Dave was surprise[d] when [he was] instructed by the police officers to follow them. He was ordered to raise his hands and then he was handcuffed. The police officers were looking for a can as they bodily searched him. Unaware as to what they were talking about, Dave failed to give an answer. Consequently, one of the men hit him

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<sup>6</sup> Id. at 4-7.

on his face. Dave insisted that nothing was recovered from him. H[is] sister, on the other hand, was crying and trembling with fear as the police officers threatened them saying, “nagbebenta kayo ng drugs kaya ikukulong namin kayo.” Dave and Ligaya were taken aboard the police vehicle and were brought to [the] Muntinlupa police station.

Upon arrival at the police station, one of the arresting officers spoke to Ligaya. The police officer informed her that she is suspected of being involved in her brother’s illegal drug activities. Ligaya denied the said allegation and insisted that her brother is not selling drugs. Thereafter, the police officers turned their attention to Dave sitting next to her. The police officers questioned Dave about his illegal drug activities and forced him to admit as to the location of some cash. Dave denied having knowledge of what they were talking about.

Afterwards, another police officer talked to Ligaya and told her that she could go home but before she could leave the precinct[,] she must give One Hundred Thousand Pesos (Php100,000.00) for Dave’s release. Ligaya responded that they did not have that amount of money to which the police officers answered, “tutuluyan nila si Dave”. The police officer[s] then showed her a sachet which they will use as evidence against Dave. Thereafter, she was release[d] from the precinct while Dave remained incarcerated.

After Ligaya left, [PO2] Hernaez spoke to Dave and showed him one (1) plastic sachet and one (1) Five Hundred Peso bill that will be used as evidence against him. Dave questioned the evidence as the same was not his and was not recovered from him. However, [PO2] Hernaez remained silent. Instead, he was put in jail. Dave only became aware of the charge against him when he was taken and presented before the Fiscal.<sup>7</sup>

### **Ruling of the RTC**

In its Decision<sup>8</sup> dated October 31, 2012, the RTC held that the prosecution sufficiently established that Dave was caught in *flagrante delicto* of selling drugs to a poseur-buyer during a buy-bust operation.<sup>9</sup> It stressed that the police officers are entitled to the presumption of regularity in the performance of their official functions in the absence of any ill motive or bad faith on their part.<sup>10</sup> Lastly, it ruled that the testimony of defense witness Emmerlyn deserves scant consideration for being inconsistent and conflicting.<sup>11</sup>

The dispositive portion of the Decision reads:

WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of the crime herein charged, DAVE CLAUDEL y LUCAS is sentenced to LIFE IMPRISONMENT and to pay a FINE of P500,000.00

The preventive imprisonment undergone by the accused shall be credited in his favor.

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

<sup>8</sup> Supra note 3.

<sup>9</sup> CA *rollo*, p. 75.

<sup>10</sup> Id.

<sup>11</sup> Id. at 78.

The drug evidence is ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Issue a MITTIMUS committing accused DAVE CLAUDEL y LUCAS to the New Bilibid Prison (NBP) for the service of his sentence pending any appeal that he may file in this case.

**SO ORDERED.**<sup>12</sup>

Aggrieved, Dave appealed to the CA.

### **Ruling of the CA**

In its Decision<sup>13</sup> dated October 22, 2014, the CA affirmed Dave's conviction. The dispositive portion of the Decision reads:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The Judgment dated 31 October 2012 of the Regional Trial Court of Muntinlupa City Branch 204 in Criminal Case No. 09-149 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>14</sup>

The CA ruled that the elements of illegal sale of dangerous drugs have been amply proven by the prosecution to affirm the conviction of Dave.<sup>15</sup> It held that non-compliance with the strict requirements of Section 21 of RA 9165 is not necessarily fatal to the prosecution's case.<sup>16</sup> What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items.<sup>17</sup> Finally, it found that the police officers exerted earnest efforts to obtain the presence and signatures of the required witnesses, but the same proved futile as they received a negative reply since it was already late at the time of the buy-bust operation.<sup>18</sup>

Hence, the instant appeal.

### **Issue**

Whether Dave's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

### **The Court's Ruling**

The appeal is meritorious. Dave is accordingly acquitted.

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<sup>12</sup> Id. at 78-79.

<sup>13</sup> Supra note 2.

<sup>14</sup> *Rollo*, p. 16.

<sup>15</sup> Id. at 9.

<sup>16</sup> Id. at 12.

<sup>17</sup> Id.

<sup>18</sup> Id. at 14.



In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense<sup>19</sup> and the fact of its existence is vital to sustain a judgment of conviction.<sup>20</sup> It is essential, therefore, that the identity and integrity of the seized drug be established with moral certainty.<sup>21</sup> 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.<sup>22</sup>

In this regard, Section 21, Article II of RA 9165,<sup>23</sup> 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 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) that the physical inventory and photographing must be done **in the presence of: (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a 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 the PNP Crime Laboratory within 24 hours from confiscation for examination.<sup>24</sup>

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 allow 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.<sup>25</sup> **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**

<sup>19</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

<sup>20</sup> *Derilo v. People*, 784 Phil. 679, 686 (2016).

<sup>21</sup> *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

<sup>22</sup> *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

<sup>23</sup> The said section reads as follows:

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

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

<sup>24</sup> See RA 9165, Art. II, Sec. 21(1) and (2).

<sup>25</sup> IRR of RA 9165, Art. II, Sec. 21(a).



**activity.** Verily, a buy-bust team normally has sufficient time to gather and bring with it 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;<sup>26</sup> 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.<sup>27</sup> It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.<sup>28</sup> Without any justifiable explanation, which must be proven as a fact,<sup>29</sup> 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.<sup>30</sup>

*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, paragraph 1 of RA 9165.

*First*, the arresting officers failed to mark and photograph the seized item at the place of arrest and seizure. Neither did they offer any explanation as to why they did not conduct the marking and photographing of the item at the place of arrest. Moreover, **none** of the three required witnesses was present at the time of arrest and during the marking, photographing and conduct of the inventory of the seized items. As testified by PO2 Hernaez:

Q: When you reached your office what did you do with the item?

A: I placed markings, sir.

x x x x

Q: Aside from the marking what else did you do in your office?

A: We made a Certificate of Inventory, sir.

Q: Where was the accused when the Inventory was made?

A: He was present and beside me, sir.

Q: Who were the witnesses to the inventory, if you can recall?

A: Rodolfo Baldobino, a DAPCO representative, sir.

**Q: Why only DAPCO representative not the Barangay official/elected official, DOJ or media? [sic]**

<sup>26</sup> *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>27</sup> *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 624-625.

<sup>28</sup> *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>29</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>30</sup> *People v. Gonzales*, 708 Phil. 121, 123 (2013).

**A: We contacted the media and Barangay officials but they had negative reply to us, sir.**

Q: What time was it when the Inventory was made?

A: It was late in the evening, around 10:00 or 11:00 in the evening, sir.

Q: What efforts did you take in order to obtain the presence or signature of the witnesses just mentioned?

A: We tried to contact the barangay and the media representative but they never came, sir.

Q: What about the Barangay, what did the Barangay tell you when you asked for their presence?

A: That there were no Barangay officials around at that time, sir.<sup>31</sup>

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*,<sup>32</sup> the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,<sup>33</sup> without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *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.

<sup>31</sup> TSN dated August 20, 2009, pp. 13-15.

<sup>32</sup> G.R. No. 228890, April 18, 2018.

<sup>33</sup> 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.”<sup>34</sup>

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

When PO2 Hernaez was asked why they were not able to secure the presence of the three required witnesses, he merely said that they tried to contact them, but they never came.<sup>35</sup> He also said that it was already too late in the evening as they arrived in the police station after the buy-bust operation at around 10:00 or 11:00 in the evening.<sup>36</sup> However, this explanation is not sufficient to justify their non-compliance with Section 21. They had more than sufficient time prior to the buy-bust operation to secure the presence of the required witnesses at the time of arrest. As admitted by PO2 Hernaez, they were able to coordinate with the PDEA and prepare the required documents prior to the buy-bust operation at about 7:00 or 8:00 in the evening.<sup>37</sup> Moreover, PO2 Hernaez admitted that it was the second time that they arrested Dave.<sup>38</sup> They thus already knew what to expect during the buy-bust operation. Hence, they should have had the foresight to do all the necessary preparations for it.

It bears stressing that the prosecution has the burden of: (1) proving its compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*:<sup>39</sup>

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 obtaining the

<sup>34</sup> *People v. Tomawis*, supra note 32 at 11-12.

<sup>35</sup> TSN dated August 20, 2009, p. 15.

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

<sup>37</sup> *Id.* at 5-6.

<sup>38</sup> *Id.* at 4.

<sup>39</sup> G.R. No. 231989, September 4, 2018.

presence of the required witnesses even before the offenders could escape.<sup>40</sup> (Underscoring added, emphasis omitted)

*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.**<sup>41</sup> If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the noncompliance with the mandatory requirements of Section 21. In this regard, it has also been emphasized that the State bears the burden of proving the justifiable cause.<sup>42</sup> 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.<sup>43</sup>

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* have been compromised.<sup>44</sup> As the Court explained in *People v. Reyes*:<sup>45</sup>

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.<sup>46</sup> (Emphasis supplied)

In the present case, the prosecution neither recognized, much less tried to justify or explain, the police's deviation from the procedure contained in Section 21. As testified by PO2 Hernaez, the buy-bust team did not secure any of the required witnesses; yet, he did not offer a justifiable reason for the absence of the required witnesses especially where, as here, the buy-bust team

<sup>40</sup> Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

<sup>41</sup> RA 9165, Sec. 21(1), as amended by RA 10640, Sec. 1.

<sup>42</sup> *People v. Beran*, 724 Phil. 788, 822 (2014).

<sup>43</sup> *People v. Reyes*, 797 Phil. 671, 690 (2016).

<sup>44</sup> *People v. Sumili*, 753 Phil. 342, 350 (2015).

<sup>45</sup> 797 Phil. 671 (2016).

<sup>46</sup> Id. at 690.

had more than sufficient time to secure the presence of the required witnesses prior to the planned arrest.

The integrity and evidentiary value of the *corpus delicti* have thus been compromised, thus necessitating the acquittal of Dave.

*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.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup> The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.<sup>50</sup> Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.<sup>51</sup>

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*<sup>52</sup> that it will not presume to set an *a priori* basis of 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 item 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 procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of Dave.

<sup>47</sup> CONSTITUTION, Art. III, Sec. 14(2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

<sup>48</sup> *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

<sup>49</sup> *People v. Mendoza*, supra note 33 at 769.

<sup>50</sup> Id. at 770.

<sup>51</sup> *People v. Catalan*, 699 Phil. 603, 621 (2012).

<sup>52</sup> 393 Phil. 68, 133 (2000).



*The buy-bust operation was merely fabricated.*

A buy-bust operation is a form of entrapment in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.<sup>53</sup> However, where there really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on.<sup>54</sup>

This is the situation in this case.

What puts in doubt the very conduct of the buy-bust operation is the police officers' deliberate disregard of the requirements of the law, which leads the Court to believe that the buy-bust operation against Dave was a mere pretense, a sham. To recall, the three required witnesses were not present during the buy-bust operation when the alleged drug was seized from Dave; hence, there were no unbiased witnesses to prove the veracity of the events that transpired on the day of the incident or whether the said buy-bust operation actually took place. Also, the police officers unjustifiably failed to mark the seized drug at the place of arrest<sup>55</sup> and to inventory and photograph the same in the presence of the other statutory witnesses<sup>56</sup> which, again, are required under the law to prevent planting, switching and contamination of evidence. These circumstances lend credence to Ligaya's testimony, which is corroborated by Emmerlyn, that the former's brother was merely fetching water when he was suddenly instructed by PO1 Yangson and PO2 Hernaez to follow them to the police station where he was questioned about his illegal drug activities and was forced to divulge the location of some cash.<sup>57</sup> Dave denied having knowledge of what they were talking about.<sup>58</sup> Meanwhile, another police officer talked to Ligaya and told her that she could go home but only if she gave One Hundred Thousand Pesos (₱100,000.00) for Dave's release.<sup>59</sup> Ligaya responded that they did not have that amount of money to which the police officers answered, "*tutuluyan nila si Dave.*"<sup>60</sup> Thereafter, the police officers showed her a sachet of drugs, which they said they would use as evidence against Dave.<sup>61</sup> She was released but her brother was put in jail.<sup>62</sup> Verily, the testimony of the two eyewitnesses deserve more credit than the testimonies of the police officers who, it must be stressed anew, did not follow

<sup>53</sup> *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 553 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

<sup>54</sup> *People v. De la Cruz*, 666 Phil. 593, 605 (2011).

<sup>55</sup> TSN dated August 20, 2009, p. 13.

<sup>56</sup> *Id.* at 14.

<sup>57</sup> *Rollo*, p. 7.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 8.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

any of the standard procedures provided by law to prove the veracity of their alleged buy-bust operation.

Indeed, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.<sup>63</sup> This is despicable. Thus, the Court reminds the trial courts to exercise extra vigilance in trying drug cases; and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

Finally, 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.<sup>64</sup>

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated October 22, 2014 of the Court of Appeals, Twelfth Division in CA-G.R. CR-HC. No. 05973 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Dave Claudel y Lucas** 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.

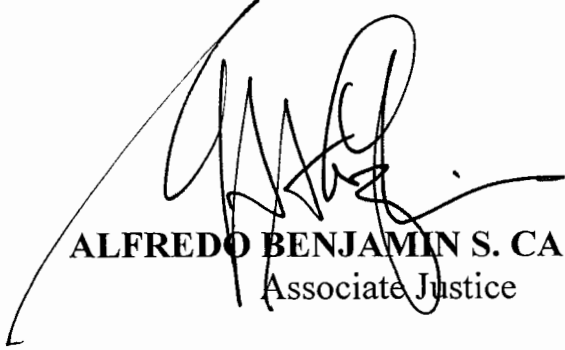
Further, the National Police Commission is hereby **DIRECTED to CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted in this case.

<sup>63</sup> *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

<sup>64</sup> See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

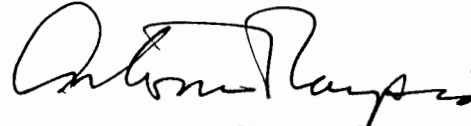


**SO ORDERED.**




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



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


(On wellness leave)  
**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
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

