



Republic of the Philippines
Supreme Court
 Manila
SECOND DIVISION

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

G.R. No. 217668

Present:

- versus -

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

BENJIE CARANTO y AUSTRIA,
 Accused-Appellant.

Promulgated:

20 FEB 2019

X-----*[Signature]*-----X

DECISION

CAGUIOA, J.:

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated September 26, 2014 of the Court of Appeals, Ninth Division (CA) in CA-G.R. CR-H.C. No. 05877, which affirmed the Decision³ dated January 2, 2012 rendered by the Regional Trial Court, Branch 60, Baguio City (RTC) in Criminal Case No. 30936-R, finding herein accused-appellant Benjie Caranto y Austria (Benjie) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The Information⁵ filed against Benjie for violation of Section 5, Article II of RA 9165 pertinently reads:

* Designated additional Member per Special Order No. 2630 dated December 18, 2018.

¹ See Notice of Appeal dated October 28, 2014, *rollo*, p.17.

² *Rollo*, pp. 2-16. Penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr., concurring.

³ *CA rollo*, pp. 37-42. Penned by Judge Edilberto T. Claravall.

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" (2002).

⁵ Records, p. 1.

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That on or about the 4th day of August, 2010, along the vicinity of Dr. Cari[ñ]o St[.], Baguio City National High School, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, [and] feloniously sell, deliver, give away, and/or distribute one (1) heat[-]sealed plastic sachet containing methamphetamine hydrochloride weighing .07 gram which, after confirmatory test, was found positive for methamphetamine hydrochloride, a dangerous drug, to PO2 Christian Romero Boado Regional Anti[-]Illegal Special Operation Task Group of the Cordillera Administrative Region, in violation of the aforecited provision of law.

CONTRARY to SECTION 5, ART II OF REPUBLIC ACT 9165.⁶

Upon arraignment, Benjie pleaded not guilty to the offense charged.⁷

Version of the Prosecution

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

The prosecution presented three witnesses, namely: Police Senior Inspector Rowena Fajardo Canlas, PO2 Christian Boado, and SPO2 Raymund Tacio, in order to prove that in exchange for One Thousand (P1,000.00) Pesos, Benjie delivered one (1) heat-sealed plastic sachet containing .07 gram of methamphetamine hydrochloride to PO2 Boado, acting as *poseur buyer*.

Through the testimony of these witnesses, the prosecution was able to establish the following facts:

PO2 Christian Boado of the Regional Anti-Illegal Drugs Special Operations Task Group (RAIDSOTG). On August 3, 2010, their office coordinated with the Philippine Drug Enforcement Authority-Cordillera Administrative Region (PDEA-CAR) in Camp Dangwa as evidenced by a Coordination Form. At around 1:00 o'clock in the afternoon of August 4, 2010, SPO4 Romeo Abordo received an information from a Confidential Informant (CI) that a certain Benjie was engaged in the sale of illegal drugs. At that time, Benjie, who may be found at Dr. Cariño Street, was looking for a prospective buyer of a certain amount of drugs valued at One Thousand (P1,000.00) Pesos.

Upon learning this, a buy-bust operation was organized under the leadership of Superintendent Glen Lonogan. Thereafter, a buy-bust team was formed composed of Captain Melchor Ong as team leader; SPO1 Jones Tacayan as Evidence Custodian; SPO1 Albert Lag-ey as Investigator on case; SPO4 Romeo Abordo as second team leader, and SPO2 Raymund Tacio as back-up operative. Superintendent Lonogan, then, instructed Captain Ong to brief the team about the operation. Capt. Ong designated PO2 Boado to act as *poseur buyer* and gave him two (2) Five Hundred (P500.00)-Peso bills, with Serial Number HS576991 and

⁶ Id.

⁷ *Rollo*, p. 3



AB342154, to serve as marked money. PO2 Boado photocopied the marked money immediately upon receipt thereof.

After their briefing, the buy-bust team proceeded from Camp Bado, Dangwa to Police Station 5 along Marcos Highway for coordination with PO2 Nelson Sad-ang. The private vehicles of SPO4 Abordo and SPO1 Lag-ey were used in the operation. PO2 Boado, the CI and a driver rode the vehicle of SPO4 Abordo while the other used the vehicle of SPO1 Lag-ey.

After said coordination, the buy-bust team left for Dr. Cariño Street, where Benjie may be found. Upon reaching said place, the CI exchanged text messages with Benjie informing the latter that he was already in the area. When Benjie showed up at the meeting place, the CI pointed at him so that PO2 Boado may be able to identify him. The car they were riding got closer to where Benjie was while their back-up team trailed them. After alighting from the vehicle, the CI approached Benjie and introduced PO2 Boado to him as the prospective buyer. Benjie asked for the money. PO2 Boado handed him two (2) Five Hundred (₱500.00)-Peso bills and Benjie gave him a plastic sachet containing *shabu*. PO2 Boado then removed his bull-cap, the pre-arranged gesture for the back-up team to assist him in the arrest of Benjie.

The back-up team composed of SPO2 Tacio and SPO1 Lag-ey approached Benjie, introduced themselves as police officers, and placed him under arrest. Benjie did not resist the arrest. Benjie was frisked for deadly weapons but what was recovered from him was a Nokia cellphone and two (2) Five Hundred (₱500.00)-Peso bills. PO2 Boado marked the items on the site with his initials. Benjie was then brought to Police Station 5 along with the confiscated items including the plastic sachet of *shabu* in PO2 Boado's possession which were brought for inventory as stated in a Certification thereto. The following individuals were present during the inventory: herein appellant Benjie; Prosecutor Ruth Bernabe, the representative of the DOJ; Danilo Patacsil, an elected Barangay official; and Roi Molina of the BCBC, the media representative. After the inventory, PO2 Boado turned over the items to SPO1 Takayen, the designated Evidence Custodian, at Police Station 5. SPO1 Takayen then requested PO2 Boado to bring the plastic sachet of *shabu* to Police Senior Inspector Rowena Canlas (PSI Canlas) of the PNP Crime Laboratory at Camp Bado, Dangwa.

After the arrest, Benjie was brought to Baguio General Hospital for medico-legal examination and drug test.

SPO2 Raymund Tacio of the Regional Anti-Illegal Drugs Special Operations Task Group (RAIDSOTG). SPO2 Tacio clarified that their team conducted a surveillance in the afternoon of August 3, 2010 in response to the numerous complaints from concerned citizens of an alleged drug activity by a certain taxi driver. Prior to conducting their surveillance, their team coordinated with the PDEA in Camp Dangwa. The other portions of SPO2 Tacio's testimony merely corroborated the testimony of PO2 Boado.



The testimony of PSI Canlas, as summarized by the RTC is as follows:

“Police Senior Inspector Rowena Canlas (PSI Canlas for brevity) is a Forensic Chemist at the PNP Regional Crime Laboratory-Cordillera. She was presented by the Prosecution as an expert witness. On August 4, 2010, PSI Canlas received a written request from Regional Anti-[Illegal] Drugs Special Operations Task Group (RAIDSOTG) to conduct a qualitative examination upon a certain specimen and an examination on the person of one Benjie Caranto. The items examined were delivered by PO2 Boado. PSI Canlas weighed the specimen and it yielded .07 grams. After which she conducted a chemical examination, using the *Simon’s* and *Marquiz Tests*, which gave a positive presumptive result for the presence of *methamphetamine hydrochloride*. After conducting a confirmatory test, PSI Canlas concluded that the items submitted contain *methamphetamine hydrochloride* or also known as *shabu*. These findings of PSI Canlas are reflected in Chemistry Report No. D-47-2010. PSI Canlas also conducted a urine test on Benjie Caranto and that upon examination of the urine sample taken from the latter, it gave a positive result for the presence of *shabu* which means that he uses the said substance. The urine test is reflected in Chemistry Report No. DT-17-21010. After the said examination, the evidence were turned over by PSI Canlas to the evidence custodian.”⁸

Version of the Defense

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

To refute the testimony of the prosecution witnesses, the defense offered the testimonies of accused Benjie Caranto and that of his nephew, Al Caranto.

In his testimony, Benjie stated that he is a taxi driver employed by Intermento Taxi. His reliever from taxi-driving duties is his nephew, Al Caranto.

On August 4, 2010, Benjie picked Al up at a Total gas station to be relieved from [his] driving duties. Al dropped Benjie off at Dr. Cariño Street where he resides. Since it was raining at that time, Benjie ran to a nearby house to shield himself from the rain. Suddenly, a male person who was about eight (8 m.) meters away, approached him and asked him if his name was “Amboy”. Benjie told the male person that it was not his name. Three (3) other individuals approached him and invited him to their office and the first person to approach him ran away. Benjie was told that he was being invited to their office because there is a complaint against him, was handcuffed and was placed inside a vehicle.

⁸ Id. at 5.

Benjie was brought to Camp Dangwa, La Trinidad, Benguet. He was allegedly forced to admit ownership of a plastic sachet containing *shabu*. He claimed that he was interrogated for about three (3) hours. He also claimed that the men boxed him causing a tear in his white driver's uniform. Thereafter, he was brought to Police Station 5 and the men allegedly called for media persons to come over. Then he was brought to Baguio General Hospital for medico-legal examination. During his testimony, he denied having received a text message from any person regarding the buying and selling of *shabu* or having anything to do with the sale of *shabu*. He clarified that the plastic sachet of *shabu* and the two (2) Five Hundred (P500.00)-Peso bills were only shown to him at the police officers' office in Camp Dangwa.

On cross-examination, Benjie stated that he does not recall having done anything which could have angered the arresting officers.

Al Caranto's testimony was admitted and stipulated on by the parties as follows:

- “1. That he is a driver-reliever of the accused Benjie Caranto;
2. That on August 4, 2010, he met Benjie Caranto at the Total Gasoline Station located at Legarda Road, Baguio City;
3. That he brought the accused, Benjie Caranto, to Cariño Street and dropped him at that place; and
4. That after dropping the accused, he saw that he was approached by three male persons.”⁹

Ruling of the RTC

In the assailed Decision dated January 2, 2012, the RTC held that all the elements of illegal sale of dangerous drugs had been proven by the prosecution.¹⁰ The prosecution clearly and adequately presented in detail the transaction that took place between the accused and the poseur-buyer.¹¹ It further ruled that in the absence of proof of motive to falsely impute a serious crime against an accused, the presumption of regularity in the performance of official duty shall prevail over the accused's self-serving defense of denial and frame-up.¹² He was informed of his constitutional rights and the procedures in relation to the accused and the evidence obtained from him was presumed to have been properly observed absent any fact showing the contrary.¹³

The dispositive portion of the Decision reads:

⁹ Id. at 6-7.

¹⁰ CA rollo, p. 40.

¹¹ Id. at 41.

¹² Id.

¹³ Id. at 41-42.



WHEREFORE, the Court finds accused BENJIE CARANTO y AUSTRIA **GUILTY BEYOND REASONABLE DOUBT** of the crime charged. He is hereby sentenced to suffer the penalty of *life imprisonment* and to pay the fine of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)** as provided for by **Section 5, Article II of Republic Act 9165**.

SO ORDERED.¹⁴

Aggrieved, Benjie appealed to the CA.

Ruling of the CA

In the assailed Decision dated September 26, 2014, the CA affirmed Benjie's conviction. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the instant appeal is hereby **DENIED**. The Decision dated January 2, 2012 of the Regional Trial Court of Baguio City, Branch 60, in Criminal Case No. 30936-R which convicted accused-appellant Benjie Caranto y Austria for the sale of illegal drugs in violation of Sec. 5, Art. II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.¹⁵

The CA ruled that the prosecution was able to sufficiently establish the presence of all the elements of illegal sale of dangerous drugs.¹⁶ It further ruled that in cases involving violation of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they enjoy the presumption of having performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on their part or deviation from the regular performance of their duties.¹⁷ Since no proof of such ill-motive on the part of the buy-bust team was adduced by Benjie, the RTC did not err in giving full faith and credence to the prosecution's account of the buy-bust operation.¹⁸ Also, it held that the police officers' failure to take photographs of the seized items while in the presence of the accused, a member of the media, a representative of the Department of Justice (DOJ), and an elected Barangay official does not affect the admissibility of the seized drugs.¹⁹ Lastly, it held that although the police officers did not strictly comply with the requirements of Section 21, Article II of RA 9165, their non-compliance did not affect the evidentiary weight of

¹⁴ Id. at 42.

¹⁵ *Rollo*, p. 15.

¹⁶ Id. at 8.

¹⁷ Id. at 12.

¹⁸ Id.

¹⁹ Id. at 14.



the drug seized from Benjie as the chain of custody of evidence was shown to be unbroken under the circumstances of the case.²⁰

Hence, the instant appeal.

Issue

Whether or not Benjie's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense²¹ and the fact of its existence is vital to sustain a judgment of conviction.²² It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.²³ Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.²⁴

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

²⁰ Id. at 15.

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

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

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

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

²⁵ The said section reads as follows:

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

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

representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.²⁶

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.²⁷ **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;²⁸ and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.²⁹ It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.³⁰ Without any justifiable explanation, which must be proven as a fact,³¹ the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.³²

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.

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

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

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

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

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

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

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

First, the arresting officers failed to photograph the seized items at the place of arrest and seizure and at the precinct where the mandatory witnesses were present. Neither did they offer any explanation as to why they did not take photographs of the seized items.

Second, **not one** of the three required witnesses was present at the time of arrest of the accused and marking of the seized items at the place of arrest. The three witnesses were only "called-in" to the police station to witness the inventory of the seized items and sign the inventory receipt. The belated participation of the three witnesses after the arrest and seizure defeats the purpose of the law in having these witnesses so as to prevent or insulate against the planting of drugs. As testified by SPO2 Raymund Tacio (SPO2 Tacio) himself:

Q After you read [to] him his Constitutional Rights, what else happened at the place where the suspect was arrested?

A The evidence was marked by SPO2 Boado.

Q After that, what happened next?

A We conducted an initial inventory and then we proceeded to Station 5 for the actual inventory.

Q At Station 5, who arrived there during the actual inventory?

A It was Prosecutor Bernabe and then the elected Barangay Official that is Patacsil, then a media representative from ABS CBN, Ron Molina.³³

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,³⁴ the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,³⁵ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the

³³ TSN, May 31, 2011, pp. 70-71.

³⁴ G.R. No. 228890, April 18, 2018.

³⁵ 736 Phil. 749 (2014).

corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”³⁶

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

It is evident that the police officers had more than ample time to secure the presence of the required witnesses at the place of arrest and seizure. As admitted by SPO2 Tacio, they were conducting a surveillance of the area on August 3, 2010, a day prior to the actual alleged buy-bust operation.³⁷ On said date, they could have already instructed the three mandatory witnesses to join them in their buy-bust operation the following day. Moreover, it was not the first time that PO2 Christian Boado (PO2 Boado) acted as a poseur-buyer in a buy-bust operation.³⁸ Thus, he and his team already knew the standard procedure in a 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 their 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*,³⁹

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

³⁷ TSN, May 31, 2011, p. 82.

³⁸ TSN, May 10, 2011, p. 53.

³⁹ G.R. No. 231989, September 4, 2018.



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 presence of the required witnesses even before the offenders could escape.**⁴⁰ (Emphasis in the original and underscoring supplied)

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.**⁴¹ 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.⁴² 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.⁴³

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.⁴⁴ As the Court explained in *People v. Reyes*:⁴⁵

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

⁴¹ COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, as amended by RA 10640, Sec. 21(1).

⁴² *People v. Beran*, 724 Phil. 788, 822 (2014).

⁴³ *People v. Reyes*, 797 Phil. 671, 690 (2016).

⁴⁴ *People v. Sumili*, 753 Phil. 342, 352 (2015).

⁴⁵ Supra note 43.

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal: x x x⁴⁶ (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. The police officers did not offer any justifiable reason for the absence of the required witnesses during the buy-bust operation itself, especially where, as here, they had more than sufficient time to secure their presence prior to the planned arrest.

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

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.⁴⁷ 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.⁴⁸

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

⁴⁶ Id. at 690.

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

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

⁴⁹ *People v. Mendoza*, supra note 35, at 770.

⁵⁰ Id.

⁵¹ *People v. Catalan*, 699 Phil. 603, 621 (2012).



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*⁵² that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of 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 Benjie.

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.⁵³ 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.⁵⁴

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 Benjie was a mere pretense, a sham. This is supported by the following circumstances:

First, the three required witnesses were not present during the buy-bust operation when the alleged drug was seized from Benjie; 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. They were only "called-in" during the inventory of the items at the police station.

Second, although they claim to have marked the seized items at the place of arrest, the police officers unjustifiably failed to photograph the

⁵² 393 Phil. 68, 133 (2000).

⁵³ *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 553, 571 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

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

seized items at the place of arrest or at the police station in the presence of the other statutory witnesses⁵⁵ which, again, is required to prevent planting, switching and contamination of evidence.

Third, the police allegedly conducted surveillance the day before the buy-bust operation, however, the same utterly lacks details. At the time they conducted the alleged surveillance on August 3, 2010, the police officers did not know yet any relevant information about the accused, such as the plate number, kind of vehicle and trade name of the taxi he was driving.⁵⁶ They even went back to the police station with a “negative result.”⁵⁷ Further, the police officers coordinated the buy-bust operation with the Philippine Drug Enforcement Agency (PDEA) even though they had no information yet from the confidential informant of the identity of the seller of *shabu*.⁵⁸ The ante-dated pre-coordination report with the PDEA and the fact that they supposedly coordinated with the PDEA without receiving any information or tip yet from the confidential informant seriously casts doubt on whether they actually conducted a buy-bust operation.

In sum, these circumstances lend credence to Benjie’s testimony, **which was corroborated by Al Caranto (Al)**, that Benjie was merely dropped off by Al at Dr. Cariño Street and that while he was shielding himself from the rain at a nearby house, three (3) individuals suddenly approached him and invited him to Camp Dangwa telling him that there was a complaint filed against him. He was then forced to admit ownership of a plastic sachet containing *shabu*.

Benjie claimed that he was interrogated for about three (3) hours. His claim that the men boxed him causing a tear in his white driver’s uniform has the ring of truth to it. Thereafter, he was brought to the Police Station 5 and the men allegedly called for media persons to come over.⁵⁹ In addition, both SPO2 Tacio and PO2 Boado did not personally read the text messages between the accused the confidential informant.⁶⁰ Neither did they present as witness the investigator who allegedly read the text messages between the confidential informant and the accused. Verily, the testimony of the accused, corroborated by Al, deserves more credit than the testimonies of the police officers who, it must be stressed anew, did not follow 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.⁶¹ This is despicable. Thus, the Court reminds the trial courts to exercise extra vigilance in trying drug cases and directs the Philippine

⁵⁵ *Rollo*, p. 14.

⁵⁶ TSN, May 31, 2011, pp. 82-83.

⁵⁷ *Id.* at 60.

⁵⁸ TSN, May 10, 2011, pp. 44-45.

⁵⁹ *Rollo*, p. 6.

⁶⁰ TSN, May 10, 2011, p. 47, TSN, May 31, 2011, p. 91.

⁶¹ *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).



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.⁶²

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 26, 2014 of the Court of Appeals, Ninth Division in CA-G.R. CR-H.C. No. 05877, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Benjie Caranto y Austria** 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.

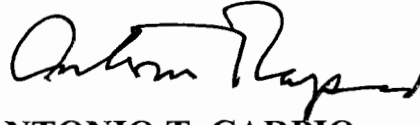
SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁶² See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

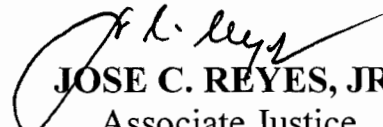
WE CONCUR:




ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



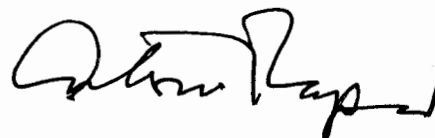
JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
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.

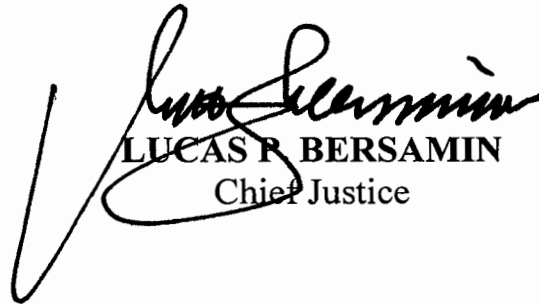


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division



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

