

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G. R. No. 229053

Present:

PERALTA, J., *Chairperson*,
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

-versus-

JORDAN CASACLANG DELA
CRUZ,
Accused-Appellant.

Promulgated:

July 17, 2019

X-----X

DECISION

LEONEN, J.:

Whenever there is an unjustified noncompliance with the chain of custody requirements, the prosecution cannot invoke the presumption of regularity in the performance of official duty to conveniently disregard such lapse. Noncompliance obliterates proof of guilt beyond reasonable doubt, warranting an accused's acquittal. Thus, the constitutional right to presumption of innocence prevails.

This resolves an Appeal¹ assailing the Court of Appeals' October 5, 2016 Decision² in CA-G.R. CR-H.C. No. 07660. The Court of Appeals

¹ Rollo, pp. 24-26.

² Id. at 2-23. The Decision was penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Danton Q. Bueser and Renato C. Francisco of the Fourteenth Division, Court of Appeals, Manila.

upheld the Regional Trial Court's July 20, 2015 Decision³ in Criminal Case Nos. L-9497 and L-9498, finding Jordan Casaclang Dela Cruz (Dela Cruz) guilty beyond reasonable doubt for violating Article II, Sections 5 and 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

On July 23, 2012, two (2) Informations were filed before the Regional Trial Court, charging Dela Cruz for violation of Republic Act No. 9165, Article II, Sections 5 and 11, for the illegal sale and illegal possession of dangerous drugs, respectively.⁴ The Informations read:

Criminal Case No. L-9497
For Violation of Article II, Section 11

“That on or about July 10, 2012 in the afternoon at Artacho St., Poblacion, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully have in his possession, control and custody two (2) plastic sachets of dried Marijuana leaves, a dangerous drug, with a total weight of 2.8 grams, without any necessary permit/license or authority to possess the same.

CONTRARY TO LAW.”

Criminal Case No. L-9498
For Violation of Article II, Section 5

“That on or about July 10, 2012 at Artacho St., Poblacion, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully, sell two (2) plastic sachets of dried Marijuana leaves with a total weight of 2.8 grams, to PO1 Denver Y. Santillan, an undercover policeman who acted as a poseur-buyer in a buy bust operation conducted against him, which were tested and yielded positive to be that of marijuana, a dangerous drug, without any authority to sell the same.

CONTRARY TO LAW.”⁵ (Citations omitted)

On arraignment, Dela Cruz pleaded not guilty to the crimes charged.⁶ The parties stipulated on Dela Cruz's identity, and that there is a pending theft case against him. Trial then ensued.⁷

The prosecution presented five (5) witnesses: (1) Police Officer 1 Denver Santillan (PO1 Santillan); (2) Police Senior Inspector Myrna C.

³ CA *rollo*, pp. 56–64. The Decision was penned by Presiding Judge Teodoro C. Fernandez of Branch 38, Regional Trial Court, Lingayen, Pangasinan.

⁴ *Rollo*, pp. 3–4.

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.* at 5.

Malojo-Todeño (Senior Inspector Malojo-Todeño); (3) Senior Police Officer 1 Edgar Verceles (SPO1 Verceles); (4) PO2 Elmer Manuel (PO2 Manuel); and (5) PO3 Pedro M. Vinluan (PO3 Vinluan).⁸

According to the prosecution, at around 2:25 p.m. on July 10, 2012, PO1 Jethiel F. Vidal (PO1 Vidal) phoned the Philippine Drug Enforcement Agency Regional Office in San Fernando City, La Union. They discussed the buy-bust operation that the Municipal Anti-Illegal Drugs Special Operations Task Group of the Lingayen Police Station in Pangasinan had planned to carry out to entrap Dela Cruz, a 20-year-old high school student suspected of selling marijuana.⁹

That same day, a team of four (4) led by Police Senior Inspector Elpidio Cruz, with PO1 Vidal, PO1 Valerio, and PO1 Santillan—the designated poseur-buyer—conducted the buy-bust operation. PO1 Santillan marked three (3) ₱50.00 bills with serial numbers ZY089061, AF260002, and RP990356, respectively, with the initials, “DYS1,” “DYS2,” and “DYS3.”¹⁰

Later, at around 3:05 p.m., the team proceeded to the Memorial Colleges along Artacho Street in Lingayen. PO1 Santillan waited for Dela Cruz on the western side of Alviar Street, while his companions positioned themselves on the eastern side.¹¹

At around 3:20 p.m., PO1 Santillan saw Dela Cruz come out of the Pangasinan National High School and walk toward him. He recognized him from the week-long surveillance he had earlier conducted. Dela Cruz, who supposedly knew PO1 Santillan from the confidential informant’s description, approached him and asked, “*Sika man? (Are you the one?)*” to which the police officer answered, “*On siak may ibabaga to may katungtung mo (Yes, I am the one referred to by your contact.)*” After telling Dela Cruz that he had the money, PO1 Santillan handed the marked bills. In exchange, Dela Cruz took out and gave him two (2) plastic sachets of suspected marijuana.¹²

PO1 Santillan placed the sachets in the right front pocket of his pants. He then removed his ball cap, the pre-arranged signal that the sale had been consummated, after which PO1 Valerio and PO1 Vidal rushed to the scene. PO1 Santillan then grabbed Dela Cruz, introduced himself as a police officer, and arrested him. As he retrieved the marked money from Dela

⁸ Id. at 5.

⁹ Id. at 5–6.

¹⁰ Id.

¹¹ Id. at 6.

¹² Id. and *CA rollo*, p. 58.

Cruz's left pocket, PO1 Santillan also found two (2) other heat-sealed, transparent, plastic sachets containing suspected marijuana.¹³

PO1 Santillan wrote "DYS4" and "DYS4-A" on each of the two (2) plastic sachets that Dela Cruz had sold him, and "DYS5" and "DYS5-A" on each of the two (2) other plastic sachets recovered from the body search.¹⁴

The police officers then brought Dela Cruz to the police station. PO3 Vinluan prepared the Request for Forensic Laboratory Examination, Request for Drug Test, and the Confiscation Receipt of the seized items.¹⁵

PO1 Santillan testified that he possessed the confiscated items from the time he took them from Dela Cruz until he eventually turned them over to the Philippine National Police Crime Laboratory for testing.¹⁶

After conducting a laboratory examination, Senior Inspector Malojo-Todeño confirmed in her July 10, 2012 Chemistry Report No. D-073-12 that the confiscated items were indeed marijuana. The four (4) specimens, which she marked "A1," "A2," "A3," and "A4," respectively weighed 1.3 grams, 1.5 grams, 1.4 grams, and 1.4 grams. She testified that she turned them over to the evidence custodian, PO2 Manuel, who corroborated this on trial.¹⁷

In his defense, Dela Cruz disclaimed any knowledge of the illegal sale and possession of drugs. He testified that on July 10, 2012, he attended his 7:30 a.m. to 11:45 a.m. classes at the Pangasinan National High School. By lunch break, he went with his friends to a nearby canteen, where three (3) unidentified men in civilian clothes approached and invited him to the municipal hall. When he said he did not do anything wrong, they assured him that they would only talk to him, and eventually asked about the pending theft case against him. When he again told them that he did nothing wrong, one (1) of the men pointed a gun at him and coerced him into boarding an STX motorcycle.¹⁸

Dela Cruz further alleged that they brought him to the police station, where he was interrogated and accused of stealing "spaghetti," a slang for cutting wires. On cross-examination, he revealed that the men who accosted him were not the police officers who testified against him.¹⁹

¹³ Id. at 6-7.

¹⁴ Id. at 7.

¹⁵ Id.

¹⁶ Id. at 8.

¹⁷ Id. at 9.

¹⁸ Id. at 10.

¹⁹ Id.

In its July 20, 2015 Decision,²⁰ the Regional Trial Court found Dela Cruz guilty of illegal possession and illegal sale of dangerous drugs:

WHEREFORE, premises considered, and the prosecution having established to a moral certainty the guilt of accused JORDAN CASACLANG DELA CRUZ, alias “Pepoy”, this Court finds him “GUILTY” of the charges and hereby renders judgment as follows:

1. In Criminal Case No. L-9497 for Violation of Section 11, Art II of the same Act, this Court in the absence of any aggravating circumstance hereby sentences said accused to an indeterminate sentence of twelve (12) years, eight (8) months and one (1) day to seventeen (17) years and eight (8) months and to pay the fine of Three Hundred Thousand Pesos (P300,000.00), with subsidiary imprisonment in case of insolvency; and
2. In Criminal Case No. L-9498 for Violation of Section 5, Art. II of RA 9165, this Court in the absence of any aggravating circumstance hereby sentences said accused to LIFE IMPRISONMENT, and to pay the fine of Five Hundred Thousand Pesos (P500,000.00) with subsidiary imprisonment in case of insolvency.

Subject drug in both cases are declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

The accused shall pay the costs of suit.

SO ORDERED.²¹ (Emphasis in the original)

The Regional Trial Court held that PO1 Santillan’s testimony had sufficiently established all the elements of the crimes charged. It gave credence to his detailed and categorical testimony, as well as his positive identification of Dela Cruz. It further noted that the two (2) sachets Dela Cruz had sold the police officer, along with the two (2) other plastic sachets in his possession, were found to have contained marijuana and later properly identified in court.²²

The Regional Trial Court also held that the prosecution had demonstrated an unbroken chain of custody, preserving the seized items’ integrity and evidentiary value. It did not give credence to Dela Cruz’s defense of denial, holding that the presumption of regularity in the performance of official duty prevails over bare denials.²³

²⁰ CA rollo, pp. 56-64.

²¹ Id. at 64.

²² Id. at 62.

²³ Id. at 63.

On appeal, the Court of Appeals, in its October 5, 2016 Decision,²⁴ affirmed the trial court Decision. It, however, modified the penalty:

WHEREFORE, the appeal is **DENIED**. Consequently, the assailed *Decision* is **AFFIRMED** with the **MODIFICATION** that the accused-appellant, in Criminal Case No. L-9497 for illegal possession of dangerous drugs, shall serve instead the indeterminate sentence of *twelve (12) years and one (1) day, as minimum to fourteen (14) years and eight (8) months, as maximum*.

The separate orders of subsidiary imprisonment in case of insolvency in both Criminal Case Nos. L-9497 and L-9498 are **DELETED**.

IT IS SO ORDERED.²⁵ (Emphasis in the original)

Noting that the proviso in Section 21 of the amended Comprehensive Dangerous Drugs Act suggested flexibility in its compliance, the Court of Appeals affirmed that the integrity and evidentiary value of the seized marijuana were properly preserved.²⁶

For the Court of Appeals, the arresting officers' alleged lapses—that the Confiscation Receipt could not be a proper inventory as it did not have Dela Cruz's signature and there were no proper witnesses in the inventory—did not render the arrest illegal or make the seized items inadmissible. It stated that the lack of signature was due to Dela Cruz's own refusal to sign it and receive his copy. As to the third-party witnesses' absence, it gave credence to PO1 Santillan's testimony that time constraints and the uncertainty that Dela Cruz would be in the meeting place prevented the buy-bust team from securing their presence.²⁷

Thus, Dela Cruz filed a Notice of Appeal,²⁸ which the Court of Appeals gave due course to on November 9, 2016.²⁹

On March 15, 2017, this Court required the parties to simultaneously file their respective supplemental briefs.³⁰

Both accused-appellant³¹ and the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines,³² manifested that they

²⁴ *Rollo*, pp. 2–23.

²⁵ *Id.* at 22.

²⁶ *Id.* at 15–19.

²⁷ *Id.* at 15–16.

²⁸ *Id.* at 24–26.

²⁹ *Id.* at 27.

³⁰ *Id.* at 29–30.

³¹ *Id.* at 31–35.

³² *Id.* at 36–40.

l

would no longer file supplemental briefs. These were noted by this Court in its July 3, 2017 Resolution.³³

In his Brief,³⁴ accused-appellant argues that the Regional Trial Court gravely erred in finding him guilty despite the police officers' failure to comply with Section 21 of the Comprehensive Dangerous Drugs Act.³⁵ He alleges that the Confiscation Receipt was improper as he did not sign it, and no elected official, Department of Justice representative, or media representative was present during the inventory. He further claims that no valid justification was offered to explain their absence.³⁶

Accused-appellant also points out that the Regional Trial Court failed to conduct an ocular inspection of the seized evidence within 72 hours after the criminal case was filed, as mandated by law. Since there is persistent doubt on the seized drug's identity, accused-appellant maintains that his conviction cannot be sustained.³⁷

On the other hand, the Office of the Solicitor General contends in its Brief³⁸ that the prosecution has substantially complied with the provisions of the Comprehensive Dangerous Drugs Act. It noted that: (1) the buy-bust team photographed and marked the *corpus delicti* at the crime scene after accused-appellant's apprehension; and (2) the chain of custody of the confiscated items was established through the prosecution witnesses' testimonies.³⁹ It adds that there is a presumption of regularity in the performance of the police officer's duties, absent contrary proof.⁴⁰

For this Court's resolution is the lone issue of whether or not the absence of an elective official, a representative from the media, and a representative from the Department of Justice during the buy-bust operation warrants accused-appellant Jordan Casaclang Dela Cruz's acquittal.

This Court grants the Petition and acquits accused-appellant of the charges.

I

In a criminal case, the prosecution must discharge the burden of proving the accused's guilt beyond reasonable doubt to secure a conviction

³³ Id. at 41–42.

³⁴ *CA rollo*, pp. 41–55.

³⁵ Id. at 48.

³⁶ Id. at 49.

³⁷ Id. at 50–51.

³⁸ Id. at 82–107.

³⁹ Id. at 93.

⁴⁰ Id. at 102.

for the crime charged. Proof beyond reasonable doubt does not require absolute certainty that excludes error. Rather, this standard requires moral certainty, “or that degree of proof which produces conviction in an unprejudiced mind.”⁴¹

Beyond being fleshed out by procedural rules, the requirement of proof beyond reasonable doubt occupies a constitutional stature,⁴² as it finds basis not only in the due process clause⁴³ of the Constitution, but also in the accused’s presumption of innocence under the Bill of Rights.⁴⁴ The right to be presumed innocent puts the burden on the prosecution to prove guilt above the reasonable doubt standard.⁴⁵

*People v. Limpangog*⁴⁶ discussed the significance of the presumption of innocence in our legal system:

The rationale behind the constitutional presumption of innocence has been explained by the Court in *People v. Godoy* as follows:

“The presumption of innocence . . . is founded upon the first principles of justice, and is not a mere form but a substantial part of the law. It is not overcome by mere suspicion or conjecture; a probability that the defendant committed the crime; nor by the fact that he had the opportunity to do so. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People and all the resources at their command. Its inexorable mandate is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt. This is in consonance with the rule that conflicts in evidence must be resolved upon the theory of innocence rather than upon a theory of guilt when it is possible to do so.”

Indeed, the State, aside from showing the existence of a crime, has the burden of correctly identifying the author of the crime. Both requisites

⁴¹ RULES OF COURT, Rule 133, sec. 2.

⁴² *Macayan, Jr. v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division].

⁴³ CONST., art. III, sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

See People v. Morales, 630 Phil. 215, 219 (2010) [Per J. Del Castillo, Second Division].

⁴⁴ CONST., art. III, sec. 14(2) provides:

SECTION 14. . . .

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

⁴⁵ *Macayan, Jr. v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division] citing *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division].

⁴⁶ 444 Phil. 691 (2003) [Per J. Panganiban, Third Division].

must be “proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. Thus, even if the defense of the accused may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus on his identity and culpability. The presumption of innocence dictates that it is for the people to demonstrate guilt and not for the accused to establish innocence.”⁴⁷ (Citations omitted)

Consequently, the rule that the conviction of the accused “must rest on the strength of the prosecution’s evidence and not on the weakness of the defense”⁴⁸ is well-entrenched in our jurisprudence.⁴⁹

II

Settled are the requisites to sustain convictions for Section 5, the illegal sale of dangerous drugs, and Section 11, the illegal possession of dangerous drugs, of the Comprehensive Dangerous Drugs Act:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.⁵⁰

As to the element of *corpus delicti*, Republic Act No. 9165, Section 21, as amended by Republic Act No. 10640, lays down the requirements for the custody and disposition of the dangerous drugs confiscated, seized, and/or surrendered:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals,*

⁴⁷ Id. at 709–710.

⁴⁸ *People v. Lorenzo*, 633 Phil. 393, 401 (2010) [Per J. Perez, Second Division].

⁴⁹ Id.; *Macayan, Jr. v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division]; *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 499 [Per J. Leonen, Third Division]; *People v. Lim*, G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>> [Per J. Peralta, En banc]; and *People v. Royol*, G.R. No. 224297, February 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005>> [Per J. Leonen, Third Division].

⁵⁰ *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

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.
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification;
- (4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the



Board, shall be donated, used or recycled for legitimate purposes: *Provider, further*, That a representative sample, duly weighed and recorded is retained[.]

*People v. Nandi*⁵¹ specified the four (4) links in the chain of custody of the confiscated item:

[T]he following links should be established in the chain of custody of the confiscated item: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁵²

Compliance with the chain of custody requirements is critical to ensure that the seized items were the same ones brought to court.⁵³ It protects the integrity of the *corpus delicti* in four (4) aspects:

[F]irst, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.⁵⁴

Nonetheless, this Court recognizes that narcotic substances are not readily identifiable and, thus, require further examination for their composition and nature to be determined.⁵⁵

*Mallillin v. People*⁵⁶ explained that “[t]he likelihood of tampering, loss[,] or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.”⁵⁷ The items presented in court during trial are relevant not only because they are available, but because of their relation to the transaction and the parties.⁵⁸

Hence, the chain of custody requirements provide safeguards from the greater possibility of abuse in anti-narcotic operations.⁵⁹

⁵¹ 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

⁵² *Id.* at 144–145 *citing* *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

⁵³ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 503 [Per J. Leonen, Third Division].

⁵⁴ *People v. Holgado*, 741 Phil. 78, 93 (2014) [Per J. Leonen, Third Division].

⁵⁵ *Id.* *citing* *Mallillin v. People*, 576 Phil. 576, 588–589 (2008) [Per J. Tinga, Second Division].

⁵⁶ 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

⁵⁷ *Id.* at 588.

⁵⁸ *People v. Belocura*, 693 Phil. 476, 496 (2012) [Per J. Bersamin, First Division].

⁵⁹ *People v. Tan*, 401 Phil. 259, 273 (2000) [Per J. Melo, Third Division].

Noncompliance with these requirements tarnishes the credibility of the *corpus delicti*, along with the claim that an offense violating the Comprehensive Dangerous Drugs Act was committed.⁶⁰ In cases involving the illegal sale and illegal possession of dangerous drugs, noncompliance with the chain of custody requirements equates to a failure to establish critical elements of these offenses, justifying an accused's acquittal:

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.⁶¹

III

*Lescano v. People*⁶² explained the specific requirements under Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended:

As regards the items seized and subjected to marking, Section 21 (1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21 (1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."

Moreover, Section 21 (1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.⁶³

⁶⁰ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 503 [Per J. Leonen, Third Division].

⁶¹ *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division].

⁶² 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

⁶³ *Id.* at 475.

*People v. Que*⁶⁴ demonstrated how the requirements under Section 21(1) were relaxed by Republic Act No. 10640:

It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive “and” indicated that Section 21 required the presence of all of the following, in addition to “the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel”:

First, a representative from the media;

Second, a representative from the Department of Justice; and

Third, any elected public official.

As amended by Republic Act No. 10640, Section 21 (1) uses the disjunctive “or,” *i.e.*, “with an elected public official and a representative of the National Prosecution Service *or* the media.” Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.⁶⁵ (Emphasis in the original, citations omitted)

Here, however, none of the three (3) people required by Section 21(1), as originally worded,⁶⁶ was present during the physical inventory of the seized items.

The Office of the Solicitor General argued that there was substantial compliance with Section 21, considering that the buy-bust team photographed the seized items and marked the *corpus delicti* at the crime scene after accused-appellant’s apprehension.

However, as this Court has repeatedly emphasized, the mere marking of the seized paraphernalia is insufficient to comply with the specific requirements laid down in the Comprehensive Dangerous Drugs Act.⁶⁷ *Que* explained the significance of strict compliance on the conduct of inventory, marking, and photographing in the presence of third-party witnesses:

What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make

⁶⁴ G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division].

⁶⁵ *Id.* at 514.

⁶⁶ The buy-bust operation was conducted in 2012, prior to the amendment.

⁶⁷ *See People v. Magat*, 588 Phil. 395, 405 (2008) [Per J. Tinga, Second Division]; *People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division]; *Lescano v. People*, 778 Phil. 460, 476 (2016) [Per J. Leonen, Second Division]; *People v. Holgado*, 741 Phil. 78, 94 (2014) [Per J. Leonen, Third Division]; *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 520 [Per J. Leonen, Third Division]; *People v. Royol*, G.R. No. 224297, February 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005>> [Per J. Leonen, Third Division].

their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence. . . . What is prone to danger is not any of these end points but the intervening transitions or transfers from one point to another.

....

People v. Garcia emphasized that ***the mere marking of seized items, unsupported by a proper physical inventory and taking of photographs, and in the absence of the persons whose presence is required by Section 21 will not justify a conviction:***

Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.

The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs “immediately after seizure and confiscation” necessarily means that the required witnesses must also be present during the seizure or confiscation. This is confirmed in *People v. Mendoza*, where the presence of these witnesses was characterized as an “insulating presence [against] the evils of switching, ‘planting’ or contamination[.]”⁶⁸ (Emphasis supplied, citations omitted)

It would be absurd to subscribe to the Office of the Solicitor General’s sweeping claim of substantial compliance when crucial aspects of the procedure laid down in Section 21(1) were clearly disobeyed.

Republic Act No. 10640 did introduce amendments that permit deviations from the law’s express requirements when there are justifiable grounds:

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,

⁶⁸ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 518–521 [Per J. Leonen, Third Division].

shall not render void and invalid such seizures and custody over said items.

Que laid down two (2) requisites that must be met to successfully invoke this proviso:

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove “justifiable grounds”; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.⁶⁹

Justification for the absence of third-party witnesses must be alleged, identified, and proved.⁷⁰ Further, there must be an earnest effort to secure their presence during the inventory:

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given

⁶⁹ Id. at 523 [Per J. Leonen, Third Division].

⁷⁰ *People v. Lim*, G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>> [Per J. Peralta, En Banc].

circumstances, their actions were reasonable.⁷¹ (Citations omitted)

Prosecution witness PO1 Santillan attempted to justify the absence of the third-party witnesses, testifying that time constraints and the uncertainty of accused-appellant's appearance at the meeting place had prevented the team from securing their presence.

However, his own testimony belies this claim. He narrated that he recognized accused-appellant from the *week-long* surveillance he had conducted prior to the buy-bust operation. Certainly, this ample amount of time had given him several opportunities to coordinate with any person qualified to be a witness. Yet, it appears that he opted not to, as did the rest of the buy-bust team.

The prosecution failed to allege, let alone prove, that earnest efforts were exerted to secure the attendance of third-party witnesses, as required by Section 21(1). Consequently, the prosecution cannot claim that the deviation from the strict requirements of the law was justified.

IV

Similarly, the prosecution cannot seek refuge in the presumption of regularity in the performance of official duties.

Noncompliance with the procedure laid down in Section 21 of the Comprehensive Dangerous Drugs Act “negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.”⁷² More to the point, *Que* elaborated the limitations of the presumption of regularity vis-à-vis the constitutional presumption of innocence:

Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad* explained that the presumption of regularity applies only when officers have shown compliance with “the standard conduct of official duty required by law.” It is not a justification for dispensing with such compliance:

Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. *A presumption of regularity in the performance of official duty is made in the context of an*

⁷¹ Id.

⁷² *People v. Navarrete*, 655 Phil. 738, 749 (2011) [Per J. Carpio Morales, Third Division].



existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined shabu and that formally offered in court cannot but lead to serious doubts regarding the origins of the shabu presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.

From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.⁷³ (Emphasis in the original, citations omitted)

The prosecution cannot conveniently seek sanctuary in the presumption of regularity and the substantial compliance umbrella to disregard the law enforcers' glaring lapses. These are not incantations that may swiftly overturn the constitutionally-guaranteed presumption of innocence. The presumption of regularity should not be a license to forgo prudence, or worse, to further violate the rights of an accused.

In cases of illegal drugs, there is a procedure under the chain of custody rules that is not difficult for law enforcers to follow, especially since a person's right to liberty is at stake.

WHEREFORE, the Court of Appeals' October 5, 2016 Decision in CA-G.R. CR H.C. No. 07660 is **REVERSED** and **SET ASIDE**. Accused-appellant Jordan Casaclang Dela Cruz is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

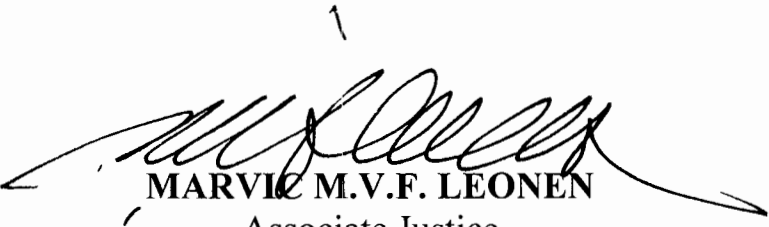
⁷³ G.R. No. 212994, January 31, 2018, 853 SCRA 487, 507-508 [Per J. Leonen, Third Division].



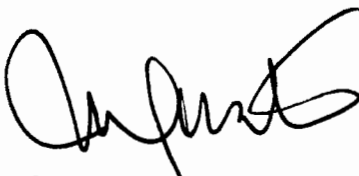
Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action he has taken within five (5) days from receipt of this Decision. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgement be issued immediately.


SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice
Chairperson


ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

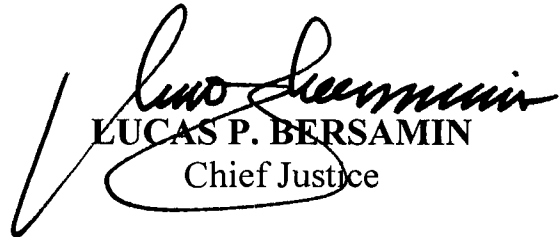
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Associate Justice
Chairperson

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