



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 242947**

Plaintiff-Appellee, Present:

- versus -

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

MARIO MANABAT y
DUMAGAY,

Accused-Appellant.

Promulgated:

17 JUL 2019

X-----X

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by accused-appellant Mario Manabat y Dumagay (accused-appellant Manabat) assailing the Decision² dated August 2, 2018 (assailed Decision) of the Court of Appeals (CA) Special Twenty Third Division in CA-G.R. CR-HC No. 01781-MIN, which affirmed the Decision³ dated September 5, 2017 of the Regional Trial Court of Dipolog City, Branch 8 (RTC) in Criminal Case Nos. 18353 and 18354, finding accused-appellant Manabat guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002,”⁴ as amended.

* On official leave.

¹ See Notice of Appeal dated September 3, 2018; *rollo*, pp. 19-21.

² *Rollo*, pp. 3-18. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo T. Lloren and Walter S. Ong concurring.

³ CA *rollo*, pp. 32-40. Penned by Presiding Judge Ric S. Bastasa.

⁴ Titled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, the essential facts of the instant case are as follows:

The accusatory portion of the *Informations* under which the accused-appellant was charged reads:

Criminal Case No. 18353

That on June 17, 2013, at 6:30 o'clock in the evening, more or less, in front (sic) [of] ABC Printing Press, Miputak, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that unauthorized sale and distribution of dangerous drugs is punishable by law, without legal authority to sell the same, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to a poseur-buyer one (1) small transparent plastic sachet of Methamphetamine Hydrochloride, more popularly known as "Shabu" approximately weighing 0.2079 gram, after receiving marked Five Hundred Peso bill bearing Serial No. TM518077 as payment therefore (sic). Subsequently, said marked money and the sum of One Hundred Fifty Pesos (P150.00), Philippine Currency which are proceeds of his illegal trade were recovered from his possession together with one (1) unit Nokia 1280 which he used in his illegal trade.

CONTRARY TO LAW.

Criminal Case No. 18354

That on June 17, 2013 at 6:30 o'clock in the evening, more or less, in front (sic) of ABC Printing Press, Miputak, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that unauthorized possession and control of dangerous drug is punishable by law, did then and there willfully, unlawfully and feloniously have in his possession and control nine (9) pieces small transparent plastic sachet of methamphetamine hydrochloride, more popularly known as "Shabu", a form of dangerous drug, approximately weighing a total of 1.8515 grams, without legal authority to possess the same, in gross (v)iolation of Section 11, Par. 3, Article II of R.A. 9165.

CONTRARY TO LAW.

Upon arraignment, appellant pleaded not guilty to both charges. Thereafter, joint pre-trial and trial of Criminal Case Nos. 18353 and 18354 ensued.

Version of the Prosecution

To prove the charges against the appellant, the prosecution presented the testimonies of the following witnesses, namely: PCI Anne



Aimee T. Pilayre, PO1 Gilbert Daabay, PO3 Michael Angcon, PO2 Lord Jericho N. Barral [(PO2 Barral)] and SPO2 Roy P. Vertudes [(SPO2 Vertudes)]. Their respective testimonies as summed up by the RTC are as follows:

PCI Anne Aimee T. Pilayre is a Forensic Chemical Officer of the Z.N. Provincial Crime Laboratory Office (ZNPCLO).

On June 22, 2013, at 10:25 pm, her office received a written request from PNP Dipolog for laboratory examination and weighing of ten (10) small transparent plastic sachets containing white crystalline granules believed to be shabu marked MM-01 to MM-09 and MM-BB-01, all dated June 17, 2013. The items were received by PO1 Gilbert Daabay, the officer of the day, endorsed to the evidence custodian and turned over to her for examination on June 18, 2013 at 7:30 in the morning. They also received a request for drug test on the urine samples from Mario Manabat.

She scrutinized the markings on the specimens and the letter-request to make sure that they coincide. She conducted physical test (i.e. ocular inspection of the specimens, taking the net weight of the specimen), the chemical test by taking a representative sample (3%) from each of the specimen and spotted with a reagent known as Simon's 1, Simon's 2 and Simon's 3 to determine the presence of dangerous drug. The specimen from the ten (10) sachets turned deep blue in color. This indicates that that (sic) all sachets are positive for methamphetamine hydrochloride or shabu. Finally, she conducted confirmatory test where representative samples of the three sachets were spotted into a thin layer chromatographic plate. She prepared Chemistry Report No. D-36-2013 which states that ***“Qualitative examination on the above submitted specimen A-1 to A-10 gave POSITIVE result to the tests for the presence of Methamphetamine hydrochloride, a dangerous drug”***.

The remainder of the samples were then placed back to the original container and sealed.

x x x x

PO1 Gilbert Daabay is a regular member of the PNP assigned as Officer-of-the-Day at the Z.N. Provincial Crime Laboratory Office (ZNPCLO).

On June 17, 2013, he received requests for laboratory examination and weighing and accompanying items involving Mario Manabat delivered personally by SPO(2) Rey (sic) Vertudes at 22:25 HRS. He took the gross weights of each item and recorded them on the logbook. He placed the specimen and documents inside an envelope.

He also received a request for drug test. After Mario filled up the drug consent form, Daabay accompanied the



suspect to the comfort room to get his urine sample. The urine sample was in a bottle with control number then placed in the refrigerator.

At 7:30 of the following day, he turned over the received items to the Forensic Chemist. The turnover of evidence to Pilayre was duly recorded in the logbook.

PO3 Michael Angcon is the Evidence Custodian of Z.N. Provincial Crime Laboratory Office (ZNPCLO) responsible for the safekeeping of all evidence and drug specimens submitted to their office for laboratory examination.

He testified that right after Pilayre conducted laboratory examination of drug specimens; he received the drug specimens and documents in the instant case. The same pieces of evidence were released to Pilayre for her Court duties on January 23, 2014.

The said turnover of evidence from Pilayre to Angcon (for safekeeping) and back to Pilayre (for Court duties) were all duly recorded in the logbook.

PO2 Lord Jericho N. Barral is a regular member of the PNP assigned at Dipolog City Police Station designated as member of the City Anti-Illegal Drugs Special Operation Task Force (CAIDSOTF).

On June 10, 2013, he received information through a text message from a confidential informant (CI) that a certain alias Mario is engaged in the selling of prohibited drugs in Estaka, Miputak and other places in Dipolog City. He and SPO(2) Roy Vertudes referred the matter to the Chief of Police, PSupt Joven Rendon Parcon, who instructed [them] to conduct [a] buy bust operation. They complied with such directive. They monitored alias Mario's activities and planned to buy a sachet of shabu from the suspect.

On June 17, 2013, they decided to conduct [a] buy-bust operation because alias Mario arrived from Ozamis and he had already (sic) stocks of shabu. They instructed the CI to negotiate with Mario with Barral acting as the poseur buyer. The CI agreed. At around 6 pm, the CI texted that he and Mario are together and that Mario accepted the request. They agreed to meet at ABC Printing Press.

Barral proceeded to the place on board his motorcycle while Vertudes, who acted as back-up, followed in his four-wheeled tinted vehicle. Barral positioned near the entrance of the printing press while Vertudes was near El Garaje establishment, a few meter (sic) from the printing press.

At about 6:30 pm, the CI and Mario arrived on board a motorcab. The CI introduced Barral to Mario as the buyer of shabu. After a short conversation, Mario agreed to sell to Barral. Barral handed a P500 bill marked money to Mario,



who received the same and in turn handed to Barral a sachet of shabu from inside a small container in his pocket. Mario placed the P500 inside his wallet. Upon receiving the shabu, [Barral] immediately held Mario. Vertudes came and assisted Barral in the arrest of Mario. They informed Mario that they were police officers of Dipolog City Police Station. Mario was told of his constitutional rights in Visayan dialect.

They called for witnesses to the inventory of items recovered from Mario. Representatives from DOJ, media and the barangay of Miputak came. Barral conducted body search on Mario in the presence of the witnesses. After the search, Mario revealed his full name. Confiscated from Mario's possession were nine (9) pieces small transparent plastic sachets in triangular shape containing white crystalline granules, one (1) piece P500 bill (marked money), P150 proceeds money, one (1) unit Nokia cellphone. Barral turned over the one (1) piece small sachet bought by Barral from Mario. Vertudes made markings on the confiscated items. He also prepared the certificate of inventory and signed by the witnesses (*sic*). The sachets of shabu were marked as MM-01 to MM-09 with date and initial (*sic*) and the one (1) piece buy-bust shabu was marked BB-01. Photographs were taken during the conduct of inventory.

In Court, Barral identified Mario Manabat as well as the items recovered from the latter.

x x x x

SPO2 Roy P. Vertudes is a regular member of the PNP and presently assigned at the Regional Police Holding Administrative Unit in Zamboanga City. He corroborated the testimony of Barral that they received information that a certain Mario Manabat is engaged in selling shabu in Estaka, Miputak and other parts in Dipolog City. They informed the Chief of Police, who in turn instructed them to conduct buy bust operation.

They instructed the CI to contact to (*sic*) as soon as Mario has available stocks of shabu. On June 17, 2013, the CI sent a text message that Mario has arrived from Ozamis City and he has stocks of shabu. x x x The CI informed that he and Mario will meet in front of ABC Printing Press in Gonzales and Malvar streets. With that information, Barral proceeded to the area on board his motorcycle while Vertudes drove his four-wheeled tinted vehicle. Vertudes parked near El Garaje. He did not alight from the vehicle. At 6:30 pm, a passenger motorcab arrived. Two male persons disembarked, one of them is the CI. Vertudes saw Barral, the CI and another male person conversing about 10 to 15 meters from him. Then, he saw Barral held (*sic*) the other male person which signifies (*sic*) that the transaction was consummated. He rushed to the scene and assisted Barral in handcuffing Mario. He did not see the exchange of items as it was already dark.



Barral introduced himself to Mario as a police officer and informed him that he was arrested for selling illegal drugs. Barral also informed Mario of his constitutional rights in Visayan dialect. Mario had no reaction. After being handcuffed, the witnesses were called. Merlinda Tenorio of DOJ, Edwin Bation of media, barangay captain Janus Yu and barangay councilor Epifanio Woo arrived. In their presence, Barral conducted body search on Mario. Items recovered by Barral from Mario's possession were turned over to Vertudes, the designated inventory officer and custodial officer. Upon Mario's request, the wallet was returned to him. The recovered items (10 sachets of shabu, P500 bill, Nokia cellphone and P150 proceeds money) were marked with Vertudes' initial and date of arrest. Pictures were taken. Mario was then brought to the ZaNorte Medical Center for routine medical checkup then to the police station. From the time of the inventory until Mario was brought to the police station, Vertudes kept custody of the drug specimens and other recovered items.

At the police station, he prepared a request for laboratory examination and weighing and request for drug test. He brought the letter with the items and the accused to the PNP Crime Laboratory.

In Court, Vertudes identified Mario Manabat, the items recovered from him and other documents.

Version of the Defense

The defense, for its part, presented Mario D. Manabat as [its] sole witness. The gist of his testimony is as follows:

Mario D. Manabat (42 years old, widower, Third Year High School level, a detention prisoner of the Dipolog City Jail and a resident of Estaka, Dipolog City) testified that there was no buy bust operation conducted against him as he was just grappled by persons near Casa Jose in the afternoon of June 17, 2013. Thereafter, he was brought to the boulevard then to the Fish Port then to the ABC Printing Press, the alleged place of arrest.

x x x x

He recalls that in the morning of June 17, 2013 (a Monday) he was at home fixing a leaking water pipe. Then he cooked and fed his children. At 1 pm, he went to church to pray for his sick child. He stayed in church for an hour and then went to the market to buy rice and viand (*pancit*). From there, he rode a motorcab going home and instructed the driver to pass by Casa Jose to see his friend Jonel Sebe, who is also a security guard. While on the way to Casa Jose, he instructed the motorcab driver to slow down as he would check if Jonel was there. While still in the motorcab, a motorcycle (*with two (2) riders whom he does not know*) blocked their way. Another motorcycle came with two (2) back riders. They alighted and pulled Mario out of the motorcab. Mario did not alight from the motorcab but a



person pointed a gun at him and told him that he is a police officer and that he should not be scared. For said reason, Mario alighted. He described the police officer as big and tall and he identified said person as Police Officer Vertudes. He was boarded to (sic) a blue easy-ride multicab. He was handcuffed.

He was brought to the boulevard, particularly in the barbecue area. He was seated behind the driver. There were five persons inside the multicab. While on the way to boulevard, he was asked if he knows a friend or a politician who is using shabu. He replied he does not know anyone because he does not know about it. He was brought to [Barral] near the gate of the Fish Port at about 3 pm. He was frisked and his short pants removed. His wallet and cellphone were taken. They stayed there for more or less 2 hours. He was then brought to ABC Printing Press on board a military jeep at 6 pm with three persons accompanying him. Upon arrival at ABC Printing Press, he was seated and a table from El Garaje establishment was installed. They returned the wallet in his pocket.

He recalls that there were other persons who arrived after 30 minutes. He was searched. Upon their arrival, Mario was searched by a police officer whom he later knew as Officer Jericho Barral. He took his wallet and cellphone. He was surprised that they took "something contained in a cellophane", nine (9) in total. They also took P500 from his pocket, which he denies owning. He insists that he has only P70 in his possession.

He was shocked upon seeing the nine (9) items displayed on the table. He told the person whom they called "Chairman" that those were not his and he had nothing to do with it. The "Chairman" did not reply. Mario told the same thing to the woman but she did not reply too.

He recalls that it was already twilight when the pictures were taken from him. The arresting officer told him of his rights. He was told that he could secure a lawyer but there was no lawyer during the search and inventory. He was asked where he got the items but he denies (sic) owning them. They were placed on him when the vehicle was running. He was brought to the police station.⁵

The Ruling of the RTC

After trial on the merits, in its Decision⁶ dated September 5, 2017, the RTC convicted accused-appellant Manabat of the crimes charged. The dispositive portion of the said Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

⁵ *Rollo*, pp. 4-10.

⁶ *CA rollo*, pp. 32-40. Penned by Presiding Judge Ric S. Bastasa.



1. **In Criminal Case No. 18353**, the Court finds the accused MARIO MANABAT y Dumagay GUILTY beyond reasonable doubt of the charge for violation of Sec. 5, Art. II, RA 9165 for selling 0.2079 gram of shabu, and sentences him to suffer life imprisonment and to pay a fine of FIVE Hundred Thousand (₱500,000.00) pesos;

2. **In Criminal Case No. 18354**, the Court finds the same accused MARIO MANABAT y Dumagay, GUILTY beyond reasonable doubt of violation Sec. 11, Art. II, RA 9165 for possessing 1.8515 grams of shabu, hereby sentences him to suffer the penalty of imprisonment of Twelve (12) years and one days as minimum to Twenty (2) years as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00);

The shabu, cash money, and cellphone used in the commission of the offense are hereby forfeited in favor of the government to be disposed in accordance with the prescribed rules.

Moreover, he is not eligible for parole pursuant to Section 2 of the Indeterminate Sentence Law.

SO ORDERED.⁷

In sum, the RTC ruled that the evidence on record was sufficient to convict accused-appellant Manabat. The RTC did not give credence to accused-appellant Manabat's defense of frame-up as it deemed the same self-serving and unsubstantiated. It held that the defense of a frame-up could not stand against the positive testimonies of PO2 Barral and SPO2 Vertudes whose testimonies enjoy the presumption of regularity. The RTC ultimately held that the prosecution sufficiently discharged its burden of proving accused-appellant Manabat's guilt beyond reasonable doubt.⁸

Feeling aggrieved, accused-appellant Manabat appealed to the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Manabat, holding that the prosecution was able to prove the elements of the crimes charged.

The dispositive portion of the assailed Decision reads:

WHEREFORE, foregoing premises considered, the instant appeal is **DENIED**. The *Decision* dated 05 September 2017 of the Regional Trial Court (RTC), Branch 8, Dipolog City, in Criminal Case Nos. 18353 and 18354 is **AFFIRMED**.⁹

After carefully reviewing the records of the case, the CA found that:

⁷ Id. at 40.

⁸ Id. at 38-39.

⁹ *Rollo*, p. 18.

the prosecution effectively established compliance with the chain of custody rule. Verily, the prosecution, through testimonial and documentary evidence, was able to account [for] the continuous whereabouts of the subject saches of *shabu*, from the time they were seized during the buy-bust operation up to the time it was presented before the court *a quo* as proof of the *corpus delicti*.¹⁰

Hence, the instant appeal.

The Issue

For resolution of the Court is the sole issue of whether the RTC and CA erred in convicting accused-appellant Manabat of the crimes charged.

The Court's Ruling

The appeal is meritorious. The Court acquits accused-appellant Manabat for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant Manabat was charged with the crimes of illegal sale and possession of dangerous drugs, defined and penalized under Sections 5 and 11, respectively, of Article II of RA 9165.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.¹¹

On the other hand, illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.¹²

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.¹³ While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,¹⁴ the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

¹⁰ Id. at 13-14.

¹¹ *People v. Opiana*, 750 Phil. 140, 147 (2015).

¹² *People v. Fernandez*, G.R. No. 198875 (Notice), June 4, 2014.

¹³ *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

¹⁴ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

In this connection, Section 21, Article II of RA 9165,¹⁵ the applicable law at the time of the commission of the alleged crimes, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; and (2) **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 thereof.**

This must be so because with the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.¹⁶

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. 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.¹⁷ **In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a**

¹⁵ 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[.]

¹⁶ *People v. Santos*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

¹⁷ IRR of RA 9165, Art. II, Sec. 21 (a).



planned activity. Verily, a buy-bust team normally has enough time to gather and bring with it the said witnesses.

As held in the fairly recent case of *People v. Tomawis*,¹⁸ the Court explained that **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, *viz.*:

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*¹⁹, 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 *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.²⁰

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 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".²¹ (Emphasis in the original)

¹⁸ G.R. No. 228890, April 18, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>>.

¹⁹ 736 Phil. 749 (2014).

²⁰ Id. at 764.

²¹ Supra note 18.



Based from the foregoing, the Court holds that the buy-bust operation was not conducted in accordance with law.

First, it is not disputed whatsoever that ***the witnesses were called and eventually arrived at the scene of the crime only after the accused-appellant was already apprehended by PO2 Barral***. On cross-examination, PO2 Barral readily admitted that during the apprehension of accused-appellant Manabat, the witnesses were not present:

Q You mean to say that during the arrest, the witnesses did not arrive yet?

A Not yet, sir.²²

Further, as testified by SPO2 Vertudes, the buy-bust team did not contact the witnesses at all before the team arrived at the place of the buy-bust operation. The witnesses were contacted only after accused-appellant Manabat was already arrested and handcuffed:

Q Before you proceeded to ABC Printing Press you did not yet contact the witnesses from the DOJ, the media and from the elected officials of the barangay right?

A Not yet, sir.

Q Only after Mario was arrested and handcuffed that you did contact those witnesses, correct?

A Yes, sir.²³

In fact, the Court notes that the prosecution offered conflicting testimonies as regards the time of arrival of the witnesses.

According to PO2 Barral, the witnesses arrived “[m]ore or less ten minutes”²⁴ after they were called. To the contrary, when SPO2 Vertudes was asked as to when the witnesses arrived, he first answered “three to five minutes sir.”²⁵ But when pressed as to the veracity of his answer, considering that the buy-bust was conducted on a Sunday, SPO2 Vertudes eventually admitted that the arrival of the witnesses was completed “[f]ifteen to thirty minutes.”²⁶

Further creating doubt as to the presence of the witnesses during the buy-bust operation is the admission of PO2 Barral on cross-examination that the photographs of the inventory do not show the presence of the witnesses, except for Councilor Epifanio Woo:

²² TSN dated October 25, 2016, p. 16.

²³ TSN dated March 2, 2017, p. 21.

²⁴ TSN dated October 25, 2016, p. 16.

²⁵ TSN dated March 2, 2017, p. 22.

²⁶ Id.



Q The witnesses are not shown in these pictures during the search, right?

A No, sir.

Q All these pictures are also taken close up?

A Yes, sir.

Q No witnesses are shown in this picture, right?

A None, sir.

x x x x

Q In the pictures marked as Exhibits "X-9" and "X-16", there is a person with fatigue short pants?

A Yes, sir.

Q You know who is this person?

A Yes, sir. Councilor Epifanio Woo. He is also shown here.²⁷

If the witnesses were indeed present during the entire photographing and inventory of the evidence, obviously, it would have been easy and effortless on the part of the buy-bust team to take photographs of the other witnesses. Yet, this was not done, creating some doubt in the mind of the Court as to the presence of the required witnesses during the buy-bust operation.

The apprehending team cannot justify its failure to ensure the availability of the witnesses during the apprehension of accused-appellant Manabat, considering that the buy-bust operation was conducted *seven days* after the day it received information about accused-appellant and was instructed to conduct the buy-bust operation. Simply stated, the apprehending team had more than enough time to ensure that all the mandatory procedures for the conduct of the buy-bust operation would be sufficiently met.

Second, the Certificate of Inventory that was produced by the prosecution was irregularly executed.

To reiterate, Section 21 of RA 9165 requires that the copies of the inventory should be signed by *all* the following persons: (a) 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).

²⁷ TSN dated October 25, 2016, pp. 18-19.



The Certificate of Inventory²⁸ itself reveals that the document was not signed by accused-appellant Manabat or by his counsel or representative. Upon perusal of the records of the instant case, the prosecution did not acknowledge such defect. Nor did the prosecution provide any explanation whatsoever as to why accused-appellant Manabat was not able to sign the Certificate of Inventory.

Concededly, Section 21 of the IRR of RA 9165 provides 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.” For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.²⁹ **In this case, the prosecution neither recognized, much less tried to justify, the police officers’ deviation from the procedure contained in Section 21, RA 9165.**

Third, the Court notes that the marking of the plastic sachets allegedly recovered was irregularly done.

Under the 1999 Philippine National Police Drug Enforcement Manual,³⁰ the conduct of buy-bust operations requires the following:

Anti-Drug Operational Procedures

Chapter V. Specific Rules

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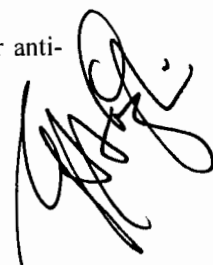
B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation – [I]n the conduct of buy-bust operation, the following are the procedures to be observed:
 - a. Record time of jump-off in unit's logbook;
 - b. Alertness and security shall at all times be observed;
 - c. Actual and timely coordination with the nearest PNP territorial units must be made;
 - d. Area security and dragnet or pursuit operation must be provided[;]
 - e. Use of necessary and reasonable force only in case of suspect's resistance[;]
 - f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

²⁸ Records, p. 96.

²⁹ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

³⁰ Philippine National Police Drug Enforcement Manual, PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.



- g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
- h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms' reach;
- i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
- j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
- k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
- l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
- m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;**
- n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and
- o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.³¹

In the instant case, as incontrovertibly revealed by the photographs of the plastic sachets allegedly retrieved from accused-appellant Manabat, only the date and initials of the seizing officers were inscribed on the specimens. **The time and place of the buy-bust operation were not indicated in the markings**, in clear contravention of the PNP's own set of procedures for the conduct of buy-bust operations.

At this juncture, it is well to point-out that while the RTC and CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict accused-appellant Manabat. Both the RTC and CA overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.³² And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt,³³ by proving

³¹ Id; emphasis and underscoring supplied.

³² CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

³³ The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that

each and every element of the crime charged in the information, to warrant a finding of guilt for that crime or for any other crime necessarily included therein.³⁴ Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that **this burden of proof never shifts**. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:³⁵

x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us**. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.³⁶ (Emphasis and underscoring supplied)

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

To reiterate, 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* would have been compromised.³⁷ As the Court explained in *People v. Reyes*:³⁸

degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

³⁴ See *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

³⁵ 745 Phil. 237 (2014).

³⁶ Id. at 250-251.

³⁷ See *People v. Sumili*, 753 Phil. 342, 350 (2015).

³⁸ 797 Phil. 671 (2016).



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.³⁹

Lastly, it was an error for the RTC to convict accused-appellant Manabat by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. **The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.**⁴⁰ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.⁴¹ As the Court, in *People v. Catalan*,⁴² reminded the lower courts:

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no

³⁹ Id. at 690. (Emphasis supplied)

⁴⁰ *People v. Mendoza*, 736 Phil. 749, 770 (2014).

⁴¹ *People v. Catalan*, 699 Phil. 603, 621 (2012).

⁴² 699 Phil. 603 (2012).



presumption of regularity of performance in their favor.⁴³ (Emphasis supplied)

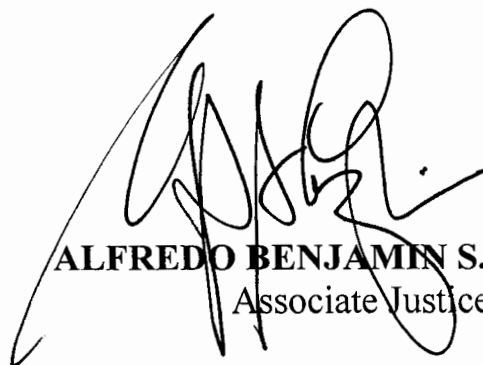
In this case, the presumption of regularity cannot stand because of the buy-bust team's disregard of the established procedures under Section 21 of RA 9165 and the PNP's own Drug Enforcement Manual.

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, accused-appellant Manabat must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated August 2, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 01781-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **MARIO MANABAT y DUMAGAY** is **ACQUITTED** of the crimes 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 San Ramon Prison and Penal Farm, Zamboanga 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.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

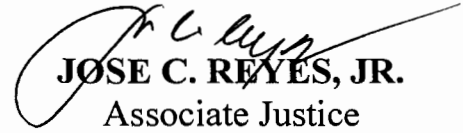


ANTONIO T. CARPIO
Associate Justice
Chairperson

⁴³ Id. at 621.

(on official leave)

ESTELA M. PERLAS-BERNABE
Associate Justice




JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

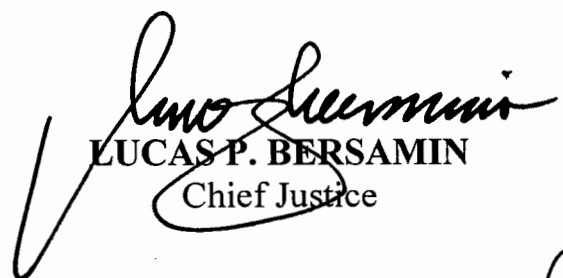
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

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

