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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 206767

Present:

-versus-

CARPIO, J., Chairperson,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
ZALAMEDA, JJ.

ORLANDO RAMOS ORDIZ,
Accused-Appellant.

Promulgated:

11 SEP 2019

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DECISION

CAGUIOA, J.:

The campaign against dangerous drugs, no matter how relentlessly and vigorously it is pursued, can never be won by resorting to shortcuts, quick fixes, and convenient circumventions of the law. It can only be won through the conduct of well-prepared and well-organized operations that strictly comply with the mandatory requirements of the law. Otherwise, by disregarding the rule of law as a means of curtailing the proliferation of illegal drugs, the war on drugs becomes a self-defeating enterprise that ends up assaulting the very persons it aims to protect from harm – the Filipino people.

The Case

Before the Court is an ordinary appeal¹ filed by accused-appellant Orlando Ramos Ordiz (accused-appellant Ordiz), assailing the Decision² dated August 2, 2012 (assailed Decision) of the Court of Appeals, Cebu City (CA)³ in CA-G.R. CR HC No. 00895, which affirmed the Decision⁴ dated

¹ See Notice of Appeal dated August 24, 2012, *rollo*, pp. 13-14.

² Id. at 3-12. Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Zenaida T. Galapate-Laguilles concurring.

³ Twentieth Division.

⁴ CA *rollo*, pp. 39-48. Penned by Presiding Judge Gabriel T. Ingles.

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November 12, 2007 rendered by the Regional Trial Court of Cebu City, Branch 58 (RTC) in Criminal Case No. CBU-71128, entitled *People of the Philippines v. Orlando Ramos Ordiz*, finding accused-appellant Ordiz guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Facts and Antecedent Proceedings

For allegedly selling a plastic sachet containing 0.03 gram of a white crystalline substance containing methamphetamine hydrochloride, commonly called *shabu*, in a buy-bust operation conducted by members of the Philippine National Police (PNP) at about 1:00 p.m. at Sampaguita Street, Barangay Capitol Site, Cebu City, accused-appellant Ordiz was charged with violation of Section 5, Article II of RA 9165.

The Information⁶ dated October 4, 2004 reads as follows:

That on October 3, 2004 at about 1:00 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without being authorized by law, did then and there sell, deliver or give away to a poseur buyer the following:

one (1) [h]eat-sealed transparent plastic packet containing 0.03 gram of white crystalline substance

locally known as “shabu” containing Methylamphetamine Hydrochloride, a dangerous drug.

Contrary to law.⁷

As gathered from the testimonies of the prosecution’s witnesses presented during the trial, namely, SPO1 Narciso Ursal, Jr. (SPO1 Ursal, Jr.), PO2 Raniel Capangpangan (PO2 Capangpangan), and SPO1 Rene Cerna (SPO1 Cerna),⁸ the prosecution’s version of events is as follows:

In the afternoon of October 3, 2004, a buy-bust operation was conducted by members of the Philippine National Police (PNP) against accused Orlando Ordiz who was reported to be selling *shabu* in the Capitol area. During the entrapment, SPO1 Cerna, as the designated poseur-buyer, approached accused with the intention of purchasing P100.00 worth of *shabu* from him while SPO1 Ursal, Jr. and PO2 Capangpangan placed themselves at strategic positions while they waited for the pre-arranged signal of waving Cerna’s hand that would indicate the consummation of the transaction. SPO1 Cerna, accompanied with a confidential asset, who knows the accused negotiated to buy P100.00 of *shabu*, which transaction

⁵ 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).

⁶ Records, pp. 1-2; underscoring in the original.

⁷ Id. at 1.

⁸ CA rollo, pp. 40-41.

was done in front of accused house. After the transaction was consummated, accused was arrested in the presence of his parents. He was informed of his constitutional rights and brought to the police station, along with the suspected shabu and the recovered buy-bust money. In the meantime, the crystallized substance that was bought from the accused was marked and brought to PNP Crime Laboratory for examination. The results revealed that the substance was positive for the presence of Methylamphetamine hydrochloride, a dangerous drug.

After the witnesses' testimonies, the prosecution formally offered their Exhibits "A" to "E" which were admitted by the trial court as part of the testimonies of the witnesses.⁹

On his part, accused-appellant Ordiz vehemently denied the prosecution's version of the incident and alleged that he was a victim of police frame-up, asserting the following:

For his defense, [accused-appellant Ordiz] stated that he was at his girlfriend's house where he spent the night of October 3, 2004. He went back to his house at around 10:00 in the morning of the following day and ate lunch at a nearby eatery owned by one Abendan. While he was eating, Abendan and PO Vicente Diola were having a drinking spree at a table in front of him. The police officer told accused to come over and when he did, he was asked about the incident involving Abendan's store which was ransacked. When he denied any knowledge about the said incident, PO Diola called someone on his cellular phone. After some time, police officers arrived and took him to the police station.

Upon his arrival at the police station, police officers Capangpangan, Ursal and Cerna, who were with an unidentified civilian, asked him about the ransacking incident of Abendan's store. When accused said he had no knowledge about such incident, he was boxed by one of the officers while officer Capangpangan hit him with a plastic chair. PO Diola, who also arrived at the police station, pointed a firearm towards the head of the accused. The officers also demanded the amount of P40,000.00 from accused and when he could not produce the money, he was detained without being informed of the nature of the charge against him.¹⁰

The Ruling of the RTC

In its Decision¹¹ dated November 12, 2007, the RTC found accused-appellant Ordiz guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.

The dispositive portion of the RTC's Decision reads:

Accordingly, this court finds the accused GUILTY as charged and hereby sentences him to Life Imprisonment and to pay a fine of P500,000.00.

⁹ *Rollo*, pp. 5-6; citations omitted, italics in the original.

¹⁰ *Id.* at 6-7; citations omitted.

¹¹ *Supra* note 4.

The pack of shabu, Exh. "B", is confiscated in favor of the state for proper disposition.

SO ORDERED.¹²

In sum, the RTC believed that the prosecution was able to fulfill its burden of proof in establishing all the essential elements of illegal sale of dangerous drugs under Section 5 of RA 9165.

Insisting on his innocence, accused-appellant Ordiz appealed before the CA.

The Ruling of the CA

In the assailed Decision,¹³ the CA affirmed the RTC's conviction of accused-appellant Ordiz. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DISMISSED** and the November 12, 2007 Decision rendered by the Regional Trial Court Branch 58, Cebu City is **AFFIRMED** *in toto*.

SO ORDERED.¹⁴

The CA found that "the prosecution successfully proved the existence of all the essential elements of the illegal sale of the dangerous drug."¹⁵

Hence, this appeal before the Court of Last Resort.

The Issue

For the Court's resolution is the issue of whether accused-appellant Ordiz is guilty beyond reasonable doubt for the crime charged.

The Court's Ruling

The foregoing question is answered overwhelmingly in the *negative*. A simple review of the records of the instant case would lead to the inescapable conclusion that *accused-appellant Ordiz's conviction is a travesty of justice*. The Court remedies this injustice and acquits accused-appellant Ordiz of the crime charged.

¹² CA rollo, p. 48.

¹³ Supra note 2.

¹⁴ Rollo, p. 11.

¹⁵ Id. at 8.

The essential elements of illegal sale of dangerous drugs

Accused-appellant Ordiz was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5 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**.¹⁶

The dearth of evidence establishing the elements of illegal sale of dangerous drugs in the instant case

It is an ancient principle of our penal system that no one shall be found guilty of crime except upon proof beyond reasonable doubt. Thus, in proving the existence of the aforesaid elements of the crime charged, the prosecution has the heavy burden of establishing the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the defense.¹⁷

In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, courts should be careful in receiving and weighing the probative value of the testimony of an alleged poseur-buyer especially when it is not corroborated by any of his teammates in the alleged buy-bust operation. *Sheer reliance on the lone testimony of an alleged poseur-buyer in convicting the accused does not satisfy the quantum of evidence required in criminal cases, that is, proof beyond reasonable doubt*.¹⁸

In the instant case, the prosecution relied on the testimonies of its three witnesses, *i.e.*, SPO1 Ursal, Jr., PO2 Capangpangan, and SPO1 Cerna.

A closer look at the testimonies of SPO1 Ursal, Jr. and PO2 Capangpangan reveal that they did not actually see firsthand the alleged sale of illegal drugs between accused-appellant Ordiz and the alleged poseur-buyer, SPO1 Cerna, as they were positioned at some considerable distance away from the area where SPO1 Cerna purportedly transacted with accused-appellant Ordiz.

In fact, the RTC itself made the observation that the testimonies of SPO1 Ursal, Jr., and PO2 Capangpangan are *unclear*, holding in its Decision that “[t]he declaration of SPO1 Narciso Ursal, Jr. and PO2 Raniel

¹⁶ *People v. Opiana*, 750 Phil. 140, 147 (2015); emphasis supplied.

¹⁷ *People v. Escalona*, 298 Phil. 88, 91 (1993); citation omitted.

¹⁸ *Id.*; italics supplied.

Capangpangan are *not clear* whether they actually saw the transaction or simply rushed up to arrest the accused after a pre-arranged signal was given.”¹⁹

Hence, with the testimonies of SPO1 Ursal, Jr. and PO2 Capangpangan being unreliable in establishing the elements of illegal sale, the RTC itself held that the prosecution’s theory rested mainly on the testimony of SPO1 Cerna, the supposed poseur-buyer.

Making a critical observation on the testimony of SPO1 Cerna, the RTC itself noted that when SPO1 Cerna was directly examined by the prosecution, “[i]t does appear that the details of the transaction are not clearly presented thru such testimony.”²⁰ And while the RTC found that SPO1 Cerna was eventually able to expound more on the supposed transaction on cross-examination, it must be emphasized that such testimony on the specific details of the drug transaction was left *uncorroborated* by the other witnesses’ testimonies.

Simply stated, the prosecution’s case hinged mostly on the uncorroborated testimony of the supposed poseur-buyer, whose testimony on direct examination was found by the RTC to be unclear and lacking in details. To reiterate, sheer reliance on the sole testimony of an alleged poseur-buyer fails to satisfy the quantum of evidence of proof beyond reasonable doubt.

For this reason alone, as there is reasonable doubt as to the elements of illegal sale of dangerous drugs, accused-appellant Ordiz’s acquittal is warranted.

Blatant non-compliance with the chain of custody rule

Aside from the foregoing, the acquittal of accused-appellant Ordiz is likewise warranted due to the *patent non-observance of the chain of custody rule*.

In cases involving dangerous drugs, the State bears not only the burden of proving the aforesaid 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.²¹

Therefore, considering that the very *corpus delicti* is the drug specimen itself, establishing the integrity of the specimen is imperative. Hence, compliance with the chain of custody rule is crucial in establishing the accused’s guilt beyond reasonable doubt.

¹⁹ CA rollo, p. 44; emphasis supplied.

²⁰ Id. at 46; emphasis supplied.

²¹ *People v. Guzon*, 719 Phil. 441, 451 (2013).

The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. This would include testimony about every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.²²

As applied in illegal drugs cases, chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court until their destruction.²³

In particular, the following links should be established in the chain of custody of the confiscated item: *first*, the seizure and marking 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.²⁴

The chain of custody rule is crucial, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.²⁵

Applying the foregoing discussion in the instant case, it is plain to see that **the prosecution failed to establish an unbroken chain of custody of the allegedly seized drug specimen.**

As readily admitted by the RTC in its Decision, “[a]t the outset, it is noted that neither the Forensic Chemical Officer, PSI Medardo Palapo, nor the custodian was presented to identify the Chemistry Report x x x.”²⁶ Through the testimony of SPO1 Ursal, Jr., the prosecution merely established that there was a request to examine the allegedly seized specimen and that the specimen was transferred from the police station to the PNP Crime Laboratory for examination.

²² *People v. Punzalan, et al.*, 773 Phil. 72, 90-91 (2015); citation omitted.

²³ *People v. Guzon, supra* note 21 at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

²⁴ *People v. Ubungen*, G.R. No. 225497, July 23, 2018; citation omitted.

²⁵ *People v. Guzon, supra* note 21 at 451, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

²⁶ CA rollo, p. 43.

Aside from the bare fact that the specimen was transferred to the PNP Crime Laboratory, there was no evidence on the condition of the specimen and how the same was exactly turned over to the forensic chemist for laboratory examination. There is likewise no evidence on record as to the conduct of the supposed laboratory examination. No testimony was provided showing the procedures undertaken by the forensic chemist in examining the specimen, assuming in the first place that an examination was really undertaken.

Moreover, there is no evidence providing details on how the specimen was returned by the forensic chemist back to the evidence custodian. In fact, the identity of the evidence custodian, assuming there was even a custodian, is unknown. *In sum, there is absolutely no evidence establishing how the specimen was stored and maintained while in the custody of the PNP.*

With the transmittal and examination of the subject specimen having no solid evidentiary basis, indubitably, there is serious doubt cast, to say the least, as to the identity, integrity, and evidentiary value of the *corpus delicti*. Inevitably, accused-appellant Ordiz must be acquitted.

***The PNP's wholesale violation
of Section 21 of RA 9165***

As if the prosecution's blatant failure to establish beyond reasonable doubt the existence of the elements of the crime charged and the patent non-observance of the chain of custody rule were not enough, the integrity and credibility of the seizure and confiscation of the prosecution's evidence are further put into serious doubt due to the indisputable and wholesale failure of the authorities to observe the mandatory procedural requirements laid down in Section 21 of RA 9165.

The treatment of the law as to dangerous drugs cases is special and unique, owing to the peculiar nature of the *corpus delicti* of the crime, which makes the same easily susceptible to manipulation in the hands of the State.

Jurisprudence has held that "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."²⁷

Therefore, as the innocence and liberty of the accused are pitted unevenly against the powerful machinery of the State, the law requires the strict observance of certain special rules that provide for procedural safeguards which ensure moral certainty in the conviction of the accused.

²⁷ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

These special rules are contained in Section 21 of RA 9165, which, at the time of the incident, mandates the following procedure in the seizure, custody, and disposition of dangerous drugs:

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[.]**²⁸

Meanwhile, the Implementing Rules and Regulations (IRR) of RA 9165 provides additional custody requirements and likewise added a “saving clause” in case of non-compliance with such requirements:

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:

- (a) The apprehending officer/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: *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, further*, that non-compliance with 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

²⁸ Emphasis supplied; Section 21 of RA 9165 was amended by RA 10640, entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.’” RA 10640, which imposed less stringent requirements in the procedure under Section 21, became effective only on July 15, 2014.

render void and invalid such seizures of and custody over said items[.]²⁹

In sum, in the conduct of buy-bust operations, the law provides 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, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

To elaborate, 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 IRR allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team.³⁰ 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 apprehending team considering that the buy-bust operations are most often than not well-planned activities.

To reiterate, the Court stresses that the aforementioned procedural requirements laid down in Section 21 of RA 9165 and the related administrative issuances are mandatory in nature. The CA’s belief that, as a general rule, the requirements found under Section 21 of RA 9165 “do not require strict compliance”³¹ and that non-observance of the said provision of the law “is not a serious flaw that can render void the seizures and custody of drugs recovered from the accused”³² is *grossly erroneous*.

In *People v. Tomawis*,³³ the Court explained that these requirements are crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence:

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*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the

²⁹ Emphasis supplied; IRR of RA 9165, Sec. 21.

³⁰ IRR of RA 9165, Art. II, Sec. 21(a).

³¹ CA *rollo*, p. 100.

³² Id. at 100-101.

³³ G.R. No. 228890, April 18, 2018.

seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

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

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.”³⁴

Concededly, however, there are instances wherein departure from the aforesaid mandatory procedures is permissible. Section 21 of the IRR provides that “non-compliance 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 of and custody over said items.” For this provision to be effective, however, the prosecution must first (1) **recognize any lapses on the part of the police officers** and (2) **be able to justify the same.**³⁵

Applying the foregoing discussion in the instant case, the Court stresses that *the authorities failed to observe literally ALL the mandatory requirements under Section 21 of RA 9165. Worse, the prosecution failed to recognize these lapses and offer sufficient justification to warrant the non-observance of these mandatory rules.*

As borne by the evidence of the prosecution, **no inventory and photographing were conducted whatsoever.** As testified by the prosecution’s witnesses, after the alleged drug transaction, accused-appellant Ordiz was immediately apprehended and brought to the police station. **In fact, the record is silent as to whether any inventory receipt or certificate**

³⁴ Id. at 11-12; emphasis and underscoring supplied, citations omitted.

³⁵ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

of inventory was executed. Surely, no such document was admitted and offered as evidence for the prosecution.

To make matters worse, none of the required witnesses was present during the buy-bust operation. The testimonies of the witnesses reveal that only the parents of accused-appellant Ordiz witnessed the apprehension of the accused-appellant.

Moreover, the marking of the allegedly seized drug specimen was not made immediately after and at the place of apprehension. No justification was made as to why the marking was done in the police station and not in the place of apprehension. Worse, it was not even shown that the police station where the marking was conducted was the nearest police station.

In sum, without any shred of recognition and explanation whatsoever on the part of the authorities justifying the serious lapses it had committed, the buy-bust team blatantly and utterly failed to observe even a single mandatory requirement under Section 21 of RA 9165. Therefore, the Court finds that the integrity and evidentiary value of the *corpus delicti* have been seriously compromised due to the PNP's complete and unjustified non-observance of Section 21 of RA 9165.

*The presumption of innocence
of the accused and the
prosecution's burden of proof to
establish guilt beyond
reasonable doubt*

In convicting accused-appellant Ordiz, both the RTC and CA relied so much on the presumption of regularity and the weak defense offered by accused-appellant Ordiz. 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 Ordiz. Simply stated, **the presumption of regularity in the conduct of police officers cannot trump the constitutional right to be presumed innocent until proven guilty.**

Both courts 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*.³⁶ 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

³⁶ CONSTITUTION, Art. III, Sec. 14(2) provides:
"In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

doubt,³⁷ by proving 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.³⁸ 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 establishing the elements of the crime, as well as compliance with the procedure outlined in Section 21 of RA 9165. As the Court stressed in *People v. Andaya*.³⁹

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.⁴⁰

The Court stresses that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.⁴¹ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.⁴² As the Court, in *People v. Catalan*,⁴³ 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

³⁷ 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 degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

³⁸ *People v. Belocura*, 693 Phil. 476, 503-504 (2012); citation omitted.

³⁹ 745 Phil. 237 (2014).

⁴⁰ *Id.* at 250-251; emphasis supplied, citation omitted.

⁴¹ *People v. Mendoza*, 736 Phil. 749, 770 (2014); emphasis supplied.

⁴² *People v. Catalan*, 699 Phil. 603, 621 (2012).

⁴³ *Id.*

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 presumption of regularity of performance in their favor.⁴⁴

Premises considered, owing to the prosecution's miserable failure in establishing beyond reasonable doubt the elements of the crime of illegal sale of dangerous drugs, coupled with the blatant non-observance of the chain of custody rule due to the non-establishment of the key links of the chain of custody, as well as the wholesale violation of Section 21 of RA 9165 on the part of the PNP, *the Court acquits accused-appellant Ordiz of the crime charged.*

The Court is aware that, in several instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.⁴⁵ In light of this grim reality, the Court finds highly reprehensible the police authorities' complete and utter disregard of the mandatory requirements under RA 9165 that ensure the integrity and reliability of buy-bust operations. Equally reprehensible is the RTC's and CA's attitude of obliviousness over the PNP's clear and palpable failure to establish accused-appellant Ordiz's guilt beyond reasonable doubt. For the guidance of the Bar, the Bench, and the public, the instant case is *an exemplar of ineptitude and careless abandon* on the part of the PNP, the prosecution, the trial court, and the appellate court in upholding the basic constitutional right of presumption of innocence. The clear and manifest negligence exhibited in convicting accused-appellant Ordiz has led to the unjust incarceration of an innocent

⁴⁴ Id. at 621; emphasis supplied, citation omitted.

⁴⁵ *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

person for almost 15 years. No decision overturning the conviction of accused-appellant Ordiz can fully rectify this grave injustice.

Therefore, the Court *sternly* reminds the trial and appellate courts to exercise extra vigilance in trying drug cases and directs the PNP to conduct an investigation on this incident and other similar cases, lest innocent persons, most of whom come from the marginalized sectors of society, be made to unjustly suffer the unusually severe penalties for drug offenses.

Epilogue

According to Charles de Montesquieu, in his treatise *The Spirit of the Laws*, *there is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice.*⁴⁶

The Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. Our Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.⁴⁷ Nevertheless, the authorities' perpetration of violations of the constitutional rights of due process and the presumption of innocence in the name of peace and order cannot be accepted.

By sacrificing the sacred and indelible rights to due process and presumption of innocence for the sheer sake of convenience and expediency, the very maintenance of peace and order sought after is rendered wholly nugatory. By thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. This cannot be so in our constitutional order.

It is in this light that the Court restores the long-deserved liberty of accused-appellant Ordiz.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated August 2, 2012 of the Court of Appeals, in CA-G.R. CR HC No. 00895 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Orlando Ramos Ordiz 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 Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The

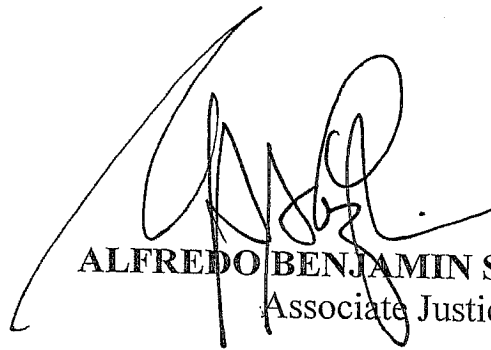
⁴⁶ See quote on <https://www.goodreads.com/quotes/612411-there-is-no-greater-tyranny-than-that-which-is-perpetrated>, last accessed on October 24, 2019.

⁴⁷ CONSTITUTION, Art. II, Sec. 5.

said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.


Further, let a copy of this Decision be furnished the Chief of the Philippine National Police, the Regional Director of the Police Regional Office 7, and the City Director of the Philippine National Police Cebu City Police Office. The Philippine National Police is **ORDERED** to **CONDUCT AN INVESTIGATION** on the brazen violation of Section 21 of RA 9165 and other violations of the law committed by the buy-bust team, as well as other similar incidents, and **REPORT** to this Court within thirty (30) days from receipt of this Decision the action taken.

SO ORDERED.

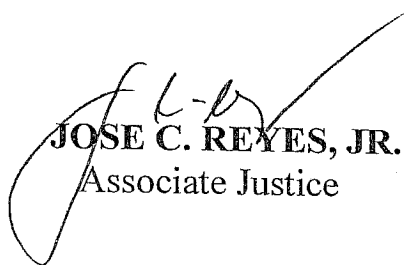


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


WE CONCUR:



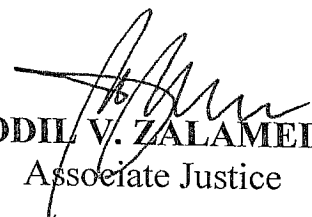
ANTONIO T. CARPIO
Associate Justice
Chairperson



JOSE C. REYES, JR.
Associate Justice



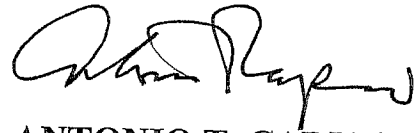
AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

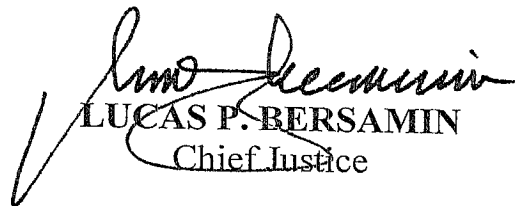
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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

