



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DENNIS OLIVER
CASTRONUEVO LUNA,

Petitioner,

G.R. No. 231902

Present:

- versus -

GESMUNDO, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

PEOPLE OF THE PHILIPPINES,

Respondent.

Promulgated:

JUN 30 2021

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court by petitioner Dennis Oliver Castronuevo Luna (petitioner Luna), assailing the Decision² dated January 5, 2017 (assailed Decision) and Resolution³ dated May 29, 2017 (assailed Resolution) of the Court of Appeals, Special Fifteenth Division (CA) in CA-G.R. CR-H.C. No. 07733, which affirmed the Judgment⁴ dated September 14, 2015 rendered by Branch 79, Regional Trial Court of Quezon City (RTC) in Criminal Case No. Q-10-165971, titled “*People of the Philippines v. Dennis Oliver Castronuevo Luna*,” finding petitioner Luna guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002,”⁵ as amended.

¹ Rollo, pp. 8-41.

² Id. at 43-53. Penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court), with Associate Justices Leoncia R. Dimagiba and Edwin D. Sorongon concurring.

³ Id. at 55-56.

⁴ Rollo, pp. 66-80. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

⁵ 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

On September 23, 2005, an Information was filed against petitioner Luna for violation of Section 11, Article II of R.A. No. 9165. The said Information reads:

That on or about the 28th day of July, 2005, in Quezon City, accused without authority of the law did then and there willfully, unlawfully, and knowingly possess a dangerous drug, to wit: five (5) kilos and two hundred twenty six (226.00) grams of methylamphetamine hydrochloride.

CONTRARY TO LAW.⁶

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

Version of the Prosecution

On July 10, 2005, Police Superintendent Acierto of the Philippine National Police - Anti-Illegal Drug Special Operation Task Force (PNPAIDSOTF) received an information from a confidential informant concerning Peter Angeles and other Chinese members belonging to his group, who were allegedly involved in drug trafficking activities. To verify the truth of such information, the SOTF operatives conducted a casing surveillance in coordination with the Quezon City Police Station and [Philippine Drug Enforcement Agency (PDEA)] per Pre-Operation Report/Coordination Sheet dated July 28, 2005. Having found the information reliable after several surveillance monitoring operations, the police operatives decided to conduct a buy-bust operation on that day. At around 2:00 o'clock in the afternoon, a certain "Sexy", known as the negotiator of Peter Angeles, called the mobile number of the confidential informant, who was then at Camp Crame. "Sexy" then discussed the details regarding the delivery of the "shabu" at Kowloon House located on West Avenue, Quezon City. "Sexy" also discussed with SPO3 Parreño, the designated poseur-buyer disguised as "Mike", as regards the manner of payment.

SPO3 Parreño immediately reported the matter to P/Supt. Acierto and P/Chief Insp. Fajardo. Thereafter, coordination with the PDEA and the Quezon City Police was made. At around 4:30 in the afternoon "Sexy" called the informant's mobile phone again and told them to proceed to Hap Chan Restaurant instead, which is also located along Quezon Avenue, and look for a silver-colored Toyota Revo with plate number XHY 278. As regards the payment, "Sexy" instructed them to give the money to the driver and take the drugs found thereat.

With the information complete, the buy bust team proceeded to Hap Chan Restaurant and saw instantly the silver-colored Toyota Revo parked in front of the said restaurant. They decided to park the undercover vehicle face-to-face with the Toyota Revo. SPO3 Parreño alighted and walked towards the parked car. When he opened the door, he saw [petitioner Luna] to whom he asked where "Sexy" is. Instead of giving a responsive answer, [petitioner Luna] asked him if he is "Mike" to which he answered in the affirmative. Forthwith, [petitioner Luna] told him to get the blue bag at the

⁶ Rollo, p. 65.

back seat and leave the money there as instructed by "Sexy". At once, SPO3 Parreño took the blue bag from the Toyota Revo and opened it. He then saw six (6) brown envelopes containing white crystalline substance inside a plastic bag which he suspected to be "shabu". Promptly, he disembarked from the Toyota Revo and left the boodle money, which was dusted with ultraviolet light, at the back seat. He immediately waved his right hand signaling his team of the consummation of the buy bust operation.

At that point, PO1 Caluag and PO1 Nepomuceno approached the Toyota Revo and apprehended [petitioner Luna] while the remaining members of the team secured the perimeter area. Upon arrest, PO1 Caluag and PO1 Nepomuceno apprised [petitioner Luna] of his constitutional rights.


Meanwhile, the six (6) packs containing white crystalline substance were seized. SPO3 Parreño labeled them as "RCP Item 1" until "RCP Item 6". Other evidence recovered from [petitioner Luna] were cellular phone, boodle money, six (6) pieces genuine Five Hundred Peso (Php500.00) bills and some cash money belonging to [petitioner Luna]. SPO3 Parreño escorted PO1 Nepomuceno in submitting the seized white crystalline substance to the crime laboratory for laboratory examination on that same day. The day after, the initial laboratory result was released indicating that the seized substances were tested positive for "shabu".

Accordingly, [petitioner Luna] was subjected to Drug Test Examination. During the same time, a Receipt/Inventory of Property Seized was prepared which was witnessed by SPO Pirote and PO3 Liwanag. While [petitioner Luna] was then present, he refused to sign the inventory. However, photographs of [petitioner Luna] with the seized items were taken. After [petitioner Luna] was subjected for inquest, he was released for further investigation. He was later re-arrested by virtue of a warrant of arrest issued by the Regional Trial Court of Quezon City as requested by the National Bureau of Investigation.

Version of the Defense

As expected, [petitioner Luna] impugned the prosecution's version and presented a completely different tale. He denied ownership or knowledge of the confiscated shabu. According to him, the car is owned by Susan Lagman, his former neighbor, who often hires him to drive for her. He also happened to drive several times for a certain "Sexy", a woman introduced by Susan to him. During those instances, "Sexy" would contact Susan and the latter would go to his house to ask him if he can drive for someone the following day. If he agrees, he will wait at the corner of Retiro Street in Sampaloc, Manila where Susan will pick him up. When Susan arrives, she will instruct him to drive for "Sexy". In all those times, "Sexy" carried a handbag and papers kept inside a brown envelope.

On July 28, 2005, his passenger was "Sexy". He recalled that in the morning, Susan was already with "Sexy" when they picked him up at his usual spot on Retiro Street. Thereat, Susan alighted from the Toyota Revo while he and "Sexy" went to Icebergs located [in] Timog, Quezon City. Upon arrival, "Sexy" disembarked and went inside the restaurant while he parked the vehicle and waited for "Sexy" until noon. When "Sexy" came out of the restaurant, she directed [him] to drive towards Sandiganbayan along Commonwealth Avenue. When they reached Sandiganbayan around 1:00 o'clock in the afternoon, "Sexy" instructed him to park the vehicle



along Filinvest Street while she went to an alley nearby. "Sexy" returned to the vehicle at 3:00 o'clock in the afternoon and told him to proceed to Hap Chan along Quezon Avenue by himself as her companions brought their vehicles. "Sexy" instructed her that if "Mike", whom she was supposed to meet, will arrive early at Hap Chan, he will have to tell "Mike" to get the bag at the rear passenger's seat and if "Mike" has something to leave for "Sexy", he will just have to leave it at the back of the Toyota Revo. Afterwards, he drove towards Hap Chan and waited inside the vehicle. At around 4:30 in the afternoon, a man approached the Toyota Revo, introduced himself as "Mike" and asked where "Sexy" was. In reply, he told "Mike" to get the bag placed at the back seat and wait for "Sexy" because she was on her way. As instructed, "Mike" took the bag. Suddenly, "Mike" announced that he is arresting him for carrying illegal drugs.

After trial, [in its Judgment dated September 14, 2015,] the RTC found [petitioner Luna] guilty beyond reasonable of the charge against him in the Information.⁷

The dispositive portion of the RTC Judgment reads:

WHEREFORE, judgment is hereby rendered finding accused DENNIS OLIVER CASTRONUEVO LUNA GUILTY beyond reasonable doubt of violation of Section 11, Article II of R.A. No. 9165 and he is hereby sentenced to life imprisonment and to pay a fine of One Million Pesos (P1,000,000.00).

The Officer-in-Charge of this Court is ordered to prepare the Mittimus for the immediate transfer of the accused to the New Bilibid Prison in Muntinlupa City.

The drug specimens, the subject matter of this case, covered by Chemistry Report D-698-05, are forfeited in favor of the Government and the Officer-in-Charge of this Court is directed to turn them over to the PDEA Crime Laboratory for proper disposition.

SO ORDERED.⁸

Hence, petitioner Luna filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of petitioner Luna. The dispositive portion of the assailed Decision reads:

WHEREFORE, the assailed Judgment dated September 14, 2015 of the Regional Trial Court of Quezon City, Branch 79 in Criminal Case Nos. Q-10-165971 is **AFFIRMED**.

SO ORDERED.⁹

In sum, the CA held that since petitioner Luna was driving the vehicle where the bag, which supposedly contained the seized packs of drug

⁷ Id. at 45-47.

⁸ Id. at 79-80.

⁹ Id. at 52.

specimen, was retrieved, he constructively possessed the alleged packs of drug specimen. Further, the CA held that the chain of custody rule was observed by the authorities despite failure of the police to strictly comply with the procedure on the custody and handling of seized drugs under Section 21, Article II of R.A. No. 9165.

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting petitioner Luna for violating Section 11, Article II of R.A. No. 9165.

The Court's Ruling

The appeal is meritorious. The Court acquits petitioner Luna for failure of the prosecution to prove his guilt beyond reasonable doubt.

There is reasonable doubt that petitioner Luna freely, consciously, and with full knowledge possessed the alleged seized packs of drug specimen

Petitioner Luna was charged with the crime of illegal possession of dangerous drugs, which is defined and penalized under a special law — Section 11, Article II of R.A. No. 9165.

It is well-settled that criminal intent need not be proved in the prosecution of acts *mala prohibita*. A person may not have consciously intended to commit a crime. But if he did intend to commit an act, and that act is, by the very nature of things, the crime itself, then he can be held liable for the *malum prohibitum*. In other words, “[i]ntent to commit the crime is not necessary, but intent to perpetrate the act prohibited by the special law must be shown.”¹⁰

Nevertheless, despite the offense of illegal possession of dangerous drugs being *malum prohibitum*, “[t]his, however, does not lessen the prosecution’s burden because it is still required to show that the prohibited act was intentional.”¹¹ In cases involving the illegal possession of dangerous drugs, “**the prosecution is not excused from proving that possession of the prohibited act was done ‘freely and consciously,’ which is an essential element of the crime.**”¹²

Hence, a critical element of the crime of illegal possession of dangerous drugs is the element of intent to possess or animus possidendi.

¹⁰ *People v. Lacerna*, G.R. No. 109250, September 5, 1997, 278 SCRA, 561, 581.

¹¹ *Id.*

¹² *Id.* Emphasis supplied.



The Court has held that in criminal cases involving prohibited drugs, there can be no conviction unless the prosecution shows that **the accused knowingly, freely, intentionally, and consciously possessed the prohibited articles in his person, or that *animus possidendi* is shown to be present together with his possession or control of such article.**¹³

Stated differently, the concept of possession contemplated under Section 11 of R.A. No. 9165 goes beyond mere actual and physical possession of the drug specimen. Otherwise, an unsuspecting person who is victimized by the planting of evidence will be unjustly prosecuted based on the sheer fact that illegal drugs were found to be in his possession. It must be proven that the person in whose possession the drug specimen was found knew that he/she was possessing illegal drugs.

Therefore, to prosecute an accused for illegally possessing illegal drugs, it is *not enough* to show that the accused knowingly and intentionally possessed the bag or receptacle that contained illegal drugs. **The prosecution must go beyond and provide evidence that the accused knowingly, freely, consciously, and intentionally possessed illegal drugs.**

Jurisprudence tells us that since knowledge refers to a mental state of awareness of a fact and, therefore, courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, **resort to other evidence is necessary.**¹⁴ Hence, *animus possidendi*, as a state of mind, may be determined on a **case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances.** Its existence may and usually must be inferred from the attendant events in each particular case.¹⁵

After a careful review of the evidence on record, the Court believes that there is, at the very least, **reasonable doubt** as to whether petitioner Luna possessed the bag with any knowledge, consciousness, and awareness that the said bag contained the allegedly seized packs of drug specimen. Otherwise stated, the surrounding factual circumstances, as established by the evidence on record, fail to clearly establish that there was *animus possidendi* on the part of petitioner Luna.

During the trial, petitioner Luna testified under oath that he is engaged in a lawful livelihood as a driver. He is an on-call driver for a construction company, a part-time driver for his aunt who is engaged in the jewelry business, and occasionally drives for a woman named Susan Lagman (Lagman) and the latter's clients.¹⁶

¹³ *People v. Peñaflorida, Jr.*, G.R. No. 175604, April 10, 2008, 551 SCRA 111, 126.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ TSN dated January 30, 2015, pp. 8-10.



On July 28, 2005, the day of the buy-bust operation, he was engaged by Lagman to drive for her client, an unknown woman with the alias *Sexy*, using Lagman's vehicle, *i.e.*, a Toyota Revo. After driving *Sexy* to the Sandiganbayan complex along Commonwealth Avenue, the latter instructed petitioner Luna to proceed to Hap Chan Restaurant without her and to meet with a certain *Mike* who would get *Sexy*'s bag, which the latter placed on the backseat of the Toyota Revo.¹⁷

The testimony of petitioner Luna establishes that the bag retrieved from the vehicle during the buy-bust operation did not come from and was not owned by petitioner Luna. Neither has it been indubitably established that the said bag and its contents were under the effective control and dominion of petitioner Luna. It was *Sexy* who placed the bag at the backseat of the vehicle. It was also *Sexy* who instructed petitioner Luna to immediately proceed to Hap Chan Restaurant and allow a certain *Mike* to get the said bag. **In short, the person who effectively wielded control over the bag was *Sexy* and not petitioner Luna.**

In convicting petitioner Luna, the RTC stressed the disputable presumption created under Section 3(j) of Rule 131 that "things which a person possesses or exercises acts of ownership over, are owned by him." Further, citing prevailing jurisprudence, the RTC explained that:

[s]ince knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drug is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.¹⁸

In finding that petitioner Luna had control or dominion over the vehicle where the alleged packs of drug specimen were retrieved, the RTC reasoned that "[n]o documentary evidence was submitted by [petitioner Luna] to prove that the Revo was owned by one Susan Lagman."¹⁹

The RTC seriously erred.

The RTC manifestly overlooked that one of the prosecution's witness, SPO3 Ronald Parreño (SPO3 Parreño), unequivocally admitted that the Toyota Revo is registered under the name of a certain Carol Bulacan and not petitioner Luna:

Q: If you recall and you will agree with me that the Revo was registered under the name of a certain Carol Bulacan?

A: Yes, sir.²⁰

¹⁷ TSN dated March 24, 2015, pp. 4-5.

¹⁸ *Rollo*, p. 78, citing *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134, 152.

¹⁹ *Id.*

²⁰ TSN dated June 26, 2014, p. 5.

SPO3 Parreño also readily admitted that the vehicle where the drug specimen was allegedly retrieved is a private vehicle for hire:

Q: Is it a public utility vehicle?

A: No your Honor, private vehicle but the vehicle is for hire.²¹

Therefore, with petitioner Luna not being the owner of the vehicle where the alleged drug specimen was recovered, **which is an undeniable fact**, and with petitioner Luna being a mere driver for hire who was simply engaged by other persons and merely followed the instructions of his principal, Lagman, and the latter's client, *Sexy*, which, on their face, were lawful instructions, it cannot be said that petitioner Luna exercised control and dominion over the vehicle where the bag of specimen was recovered. Necessarily, the presumption of *animus possidendi* did not arise.

Further, the Court finds that the RTC incorrectly upheld the presumption of *animus possidendi* on the basis of Rule 131, Section 3(j).

Based on the RTC's line of reasoning, since the bag was in the possession of petitioner Luna, the aforesaid rule on evidence creates the presumption that the alleged packs of drug specimen found inside the bag are owned by petitioner Luna, and therefore, the presumption of *animus possidendi* is established.

On this point, the RTC seriously erred yet again.

Striking is the clear and categorical admission by SPO3 Parreño on cross-examination that **petitioner Luna is not the owner of the alleged illegal drugs found inside the bag:**

Q: He did not. I want you to be honest Mr. Witness, **accused Dennis Luna is not actually the owner of these dangerous drugs that were the subject of your buy-bust operation?** You will be honest to tell us that?

A: **Yes, sir, because when we investigated him, he told us that he was just rented by Sexy and he was given only P400.00.** x x x

Q: And he told you that he is just an employee of a certain Carol Bulacan who is the owner of that Toyota Revo, did he tell you that?

A: According to him he was only a driver renting the vehicle for service, sir.²² (Emphasis and underscoring supplied)

SPO3 Parreño likewise testified that the bag was not really and effectively controlled by petitioner Luna as he was merely acting under the instructions of *Sexy*.²³

²¹ Id.

²² TSN dated December 5, 2013, p. 18.

²³ Id. at 18-19.

Therefore, with the unequivocal admission by the prosecution that the alleged bag of drug specimen is not owned and controlled by petitioner Luna, the RTC's reliance on the presumption of *animus possidendi* should be reversed.

Neither can it be said that the factual circumstances in the instant case would have created some suspicion on the part of any reasonable person that would ordinarily lead such person to verify for himself/herself the contents of the bag.

Petitioner Luna had no capacity to check the contents of the bag left by *Sexy*, not only because he had no right to do so as he was not the owner of the bag and that he was merely a hired driver of a car that was not owned by him, but because it was physically impossible for him to do so as he was driving the vehicle and the bag was simply left by *Sexy* at the backseat of the car that was not easily accessible to him. Further, petitioner Luna had already previously driven for *Sexy* on several occasions without any incident. Hence, the factual circumstances are not enough to have seriously alerted petitioner Luna that the bag he was asked to deliver on behalf of *Sexy* contained illegal drugs.

This is in sharp contrast with *People v. Peñaflorida, Jr.*,²⁴ where the accused therein was convicted for illegal possession of drugs, even if the latter testified that he lacked knowledge as to the contents of the package he delivered, because the edges of the marijuana leaves were plainly evident from the outside of the package, which should have thus reasonably alerted the accused therein as to the presence of illegal drugs. Such analogous circumstance is not present in the instant case.

The circumstances of the instant case are likewise vastly different to those in *People v. Lacerna*,²⁵ where the conviction of the accused therein was upheld because “[h]is bare, unpersuasive, feeble and uncorroborated disavowal — that the plastic bag was allegedly given to him by his uncle without his knowing the contents — amounts to a denial which by itself is insufficient to overcome this presumption.”²⁶ **In the instant case, petitioner Luna does not merely rely on his own denial. The prosecution itself, through SPO3 Parreño, admitted that the alleged drug specimen was not owned and was not controlled by petitioner Luna.**

Simply stated, the evidence on record lead to the reasonable but inescapable conclusion that petitioner Luna had no knowledge and consciousness whatsoever as to the contents of the bag and that he had no intention whatsoever to possess illegal drugs.

Hence, considering that petitioner Luna enjoys the presumption of innocence, it was incumbent upon the prosecution to show that there were

²⁴ Supra note 13.

²⁵ Supra note 10.

²⁶ Id. at 582.



prior or contemporaneous acts committed by petitioner Luna, as well as surrounding circumstances, which show that petitioner Luna freely and intentionally possessed the bag with full knowledge that it contained illegal drugs.

Upon review of the evidence of the prosecution, the Court holds that the prosecution failed to do so.

On cross-examination, SPO3 Parreño, a witness for the prosecution who was part of the buy-bust team, testified that, according to the information gathered by the authorities prior to the buy-bust operation, petitioner Luna was never identified to be a part of the group of Peter Angeles and *Sexy*, the persons alleged to be involved in illegal drugs:

Q: And during your surveillance, Mr. witness, will you be honest to tell us, that **you never seen (*sic*) accused Dennis Luna involved with this alias *Sexy*, correct?**

A: **Yes, sir.**

Q: You also mentioned today about the group of Peter Angeles and at the time of the confiscation of this (*sic*) drugs involved in this case[,] there was an information that they are going to transfer the 70 kilos of shabu and do you also agree with me that **accused Dennis Luna was never part of the group of Peter Angeles according to your information?**

A: **Yes, sir.**²⁷ (Emphasis supplied)

In fact, SPO3 Parreño expressly admitted under oath that petitioner Luna had nothing to do with the transaction, referring to the supposed sale of illegal drugs:

Q: Mr. witness, at that time when you arrested the accused, **is it not a fact that he has nothing to do with the transaction?**

A: **Yes, sir.**²⁸ (Emphasis supplied)

To further bolster petitioner Luna's defense that he in fact had no knowledge that the bag contained illegal drugs and that he had no intention whatsoever to possess illegal drugs, SPO3 Parreño testified that during the buy-bust operation, petitioner Luna merely told him that he was just instructed by *Sexy* to deliver the bag, revealing that there was no clear indication that petitioner Luna actually knew the contents of the bag retrieved:

Q: But Mr. Witness, accused Dennis Luna did not even bother to see what's inside the bag, he did not even bother to see what's inside the bag before he told you that there is a bag there intended for you? You did not even mention in your affidavit that he checked the bag that you carry with you (*sic*)?

²⁷ TSN dated June 26, 2014, p. 8.

²⁸ Id. at 4.



A: Yes, sir.²⁹

These admissions on the part of the prosecution reinforce the defense's theory that petitioner Luna really had no knowledge as to the contents of the bag he was asked to deliver to *Mike* as he was merely a hired driver asked to deliver items in behalf of his clients.

Simply stated, there is a dearth of evidence on record showing that petitioner Luna had actual knowledge of the contents of the bag or that there is reasonable expectation to believe that petitioner Luna knew or should have known what was inside the bag. Necessarily, without knowledge as to the contents of the bag, petitioner Luna could not have intended to possess illegal drugs.

In sum, upon careful review of the records of the instant case, the Court finds that the prosecution failed to satisfy the required quantum of evidence that would show that petitioner Luna had knowledge as to the contents of the bag seized by the police. The prosecution failed to establish beyond reasonable doubt that there was *animus possidendi* on the part of petitioner Luna. Therefore, petitioner Luna is acquitted of the crime charged against him.

There is reasonable doubt as to the integrity and evidentiary value of the seized packs of drug specimen

Even assuming *arguendo* that petitioner Luna constructively possessed the packs of drug specimen found inside the bag, all the same, the Court acquits petitioner Luna as there is serious doubt in the mind of the Court with respect to the integrity and evidentiary value of the packs of drug specimen retrieved.

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.³⁰ 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,³¹ the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. 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

²⁹ TSN dated December 5, 2013, p. 17-18.

³⁰ *People v. Guzon*, 719 Phil. 441, 451 (2013).

³¹ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).



forensic laboratory, to safekeeping, to presentation in court for destruction.³² The rule is imperative, 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.³³

In this connection, **Section 21, Article II of R.A. No. 9165**,³⁴ 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**; (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 the possibility of abuse is great, given 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.³⁵

Section 21 of R.A. No. 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.**

³² *People v. Guzon*, supra note 30, citing *People v. Dumaplin*, 700 Phil. 737 (2012).

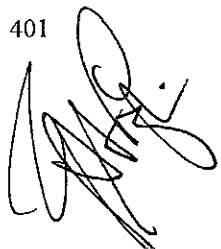
³³ *People v. Guzon*, id., citing *People v. Remigio*, 700 Phil. 452 (2012).

³⁴ The said section reads as follows:

Section 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[.]

³⁵ *People v. Santos*, G.R. No 175593, October 17, 2007, 536 SCRA 489, 503, citing *People v. Tan*, 401 Phil. 259, 273 (2000).



It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of R.A. No. 9165 allow 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.³⁶ In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that could easily be complied with by the apprehending team considering that the operation was a planned activity.** In fact, prior to the operation, the team was able to procure a search warrant. Verily, the authorities had more than enough time to gather and bring with them the said witnesses and ensure the strict observance of Section 21 of R.A. No. 9165.

In the instant case, it cannot be denied that the authorities seriously and, in a wholesale manner, swept aside the compulsory procedures mandated under Section 21 of R.A. No. 9165.

First, the inventory and marking of the evidence allegedly retrieved were not done immediately after the seizure of the packs of drug specimen at the area where the buy-bust operation was conducted.

As testified by SPO3 Parreño, after the apprehension of petitioner Luna by the buy-bust team, the team proceeded to “[its] office for proper investigation and disposition, [referring to Camp Crame, Quezon City.]”³⁷

On cross-examination, when asked as to why the inventory was not conducted at the place where petitioner Luna was arrested as mandated under the law, SPO3 Parreño answered: “because we were exhausted at that time.”³⁸ It goes without saying that mere exhaustion and weariness are unacceptable and obviously do not warrant a departure of the mandatory rules of procedure under the law.

To stress once more, Section 21 of R.A. No. 9165 mandatorily requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation at the place of apprehension. Further, to reiterate, the IRR of R.A. No. 9165 allow 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.³⁹ There is no clear showing that the police station where the authorities conducted the inventory and marking is the nearest police station or nearest office of the apprehending team from the place of the apprehension.

Second, the prosecution readily admits that there were no representatives from the media, the DOJ, and an elected official who witnessed the inventory and marking of the evidence seized.

³⁶ IRR of R.A. No. 9165, Art. II, Sec. 21(a).

³⁷ TSN dated March 22, 2013, p. 15.

³⁸ TSN dated June 26, 2014, p. 7.

³⁹ IRR of R.A. No. 9165, Art. II, Sec. 21(a).

As unequivocally admitted by SPO3 Parreño, none of the required witnesses was present during the inventory and that the buy-bust team failed to comply with Section 21 of R.A. No. 9165:

Q: So there was **no representative from the media, there was no representative from the Department of Justice and there was nobody who was an elected official who witnessed the inventory?**

A: **Yes, sir.**

x x x x

Q: Mr. Witness, since there were no representatives from the media and the DOJ, **you will be honest to tell us now that you did not comply with Section 21 as you said?**

A: **Yes, sir.**⁴⁰ (Emphasis supplied)

There is no acceptable and reasonable excuse that the prosecution can offer to account for the failure of the authorities to fulfill the mandatory rules on witnesses under Section 21 of R.A. No. 9165 because, as admitted by a witness of the prosecution, PO1 Glen Marlon Caluag, the police had more than enough time to ask procure the presence of the witnesses, yet failed to do so:

Q: **You have more than enough time to ask from the representative of the DOJ, the media and any elected official to [witness] the intended buy-bust operation on July 28, 2005?**

A: **Yes, sir.**⁴¹ (Emphasis supplied)

The Court must again stress that the procedural requirements laid down in Section 21 of R.A. No. 9165 is mandatory, and that the law imposes these requirements to serve an essential purpose. In *People v. Tomawis*,⁴² 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*,⁴³ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.⁴⁴

⁴⁰ TSN dated December 5, 2013, p. 20.

⁴¹ TSN dated October 22, 2014, p. 12.

⁴² 830 Phil. 385 (2018).

⁴³ 736 Phil. 749 (2014).

⁴⁴ Id. at 764.

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.”⁴⁵ (Emphasis and underscoring in the original)

Regrettably, both the RTC and CA seriously 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,⁴⁶ 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.⁴⁷ The procurement must prove 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.⁴⁸ Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

Concededly, Section 21 of the IRR of R.A. No. 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.⁴⁹

⁴⁵ *People v. Tomawis*, supra note 42, at 408-409.

⁴⁶ CONSTITUTION, Art. III, Sec. 14(2): “In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.”

⁴⁷ 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, Section 2)

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

⁴⁹ See *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 329.

In this case, to reiterate, **the prosecution failed to sufficiently justify its blatant deviation from the procedure contained in Section 21, R.A. No. 9165.**

Breaches of the procedure outlined in Section 21 committed by the police officers, left insufficiently justified 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 necessarily have been compromised.⁵⁰ As the Court explained in *People v. Reyes*:⁵¹

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.⁵² (Emphasis supplied)

In *People v. Umipang*,⁵³ the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witnesses before the buy-bust operation was executed. In the said case, the Court held:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21 (1) of R.A. 9165. **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. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21 (1) of R.A. 9165, or that**

⁵⁰ See *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 152-154.

⁵¹ 797 Phil. 671 (2016).

⁵² Id. at 690.

⁵³ 686 Phil. 1024 (2012).

there was a justifiable ground for failing to do so.⁵⁴ (Emphasis and underscoring supplied)

Therefore, considering the foregoing, the Court acquits petitioner Luna of the offense of illegal possession of dangerous drugs under Section 11 of R.A. No. 9165 because the prosecution failed to establish beyond reasonable doubt the existence of *animus possidendi* on the part of petitioner Luna and failed to preserve the integrity and evidentiary value of the evidence supposedly seized during the operation.

Final Note

The Court is aware that the amount of drugs involved in this case is not miniscule and thus may create the appearance that the same cannot be planted, switched, or tampered with. However, the Court has consistently emphasized that the requirements of Section 21 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality, or worse, ignored as an impediment to the conviction of illegal drugs suspects. Thus, regardless of the amount involved, the Court must not create an exception and the policemen who miserably failed to follow the requirements under Section 21 must see the gravity of the consequences of **their** actions. *Apropos* to this, the Court stresses its pronouncement in *People v. Luna*:⁵⁵

The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws — in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty does go unpunished, then that is on the police and the prosecution — that is for them to explain to the People.⁵⁶

It is unfortunate that petitioner Luna, the accused in this case, took the fall for the real menaces in society — the drug dealers who ultimately profit from the proliferation of dangerous drugs. Instead of pinning petitioner Luna, the agents of the State could have very well utilized him to go after the people who are most guilty. In a disastrous turn of events, however, an innocent driver was prosecuted to no end, and suffered the consequences for simply trying to make a living through legitimate means. This shortsightedness puts into question not only the integrity of the *corpus delicti*, but the very efforts of the State agents to curtail the drug problem.

The Court shares the belief that the menace of illegal drugs must be curtailed with resoluteness and determination. However, in the process of eliminating the drug menace, the authorities should not resort to shortcuts and quick fixes, as they did in the instant case. The constitutional right to due process

⁵⁴ Id. at 1052-1053.

⁵⁵ 828 Phil. 671 (2018).

⁵⁶ Id. at 700.



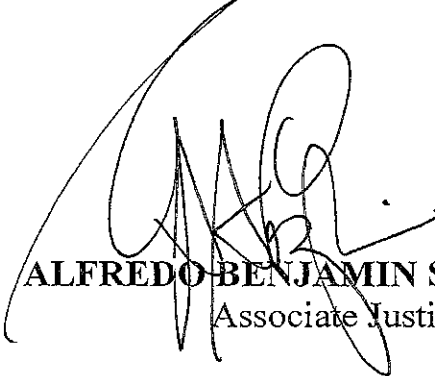
should never be sacrificed for the sheer sake of convenience. The rule of law should never be compromised.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated January 5, 2017 and the Resolution dated May 29, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07733 are hereby **REVERSED** and **SET ASIDE**.

Accordingly, petitioner Dennis Oliver Castronuevo Luna 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.

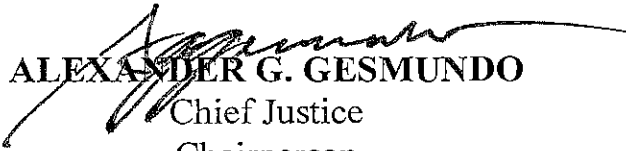
Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prisons, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

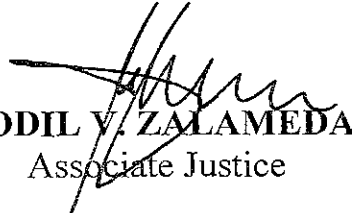
WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice
Chairperson



ROSLARI D. CARANDANG
Associate Justice

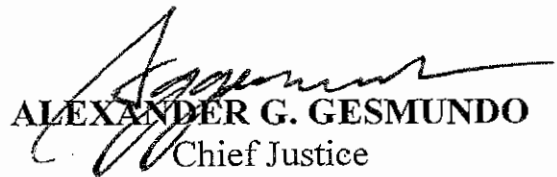


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


ALEXANDER G. GESMUNDO
Chief Justice

