



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 233747

Present:

- versus -

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
A. REYES, JR., and  
CARANDANG, JJ.

NILA MALANA y SAMBOLLEDO,  
Accused-Appellant.

Promulgated:  
05 DEC 2018

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*[Signature]*-----x

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal<sup>1</sup> filed by accused-appellant Nila Malana y Sambolledo (accused-appellant Malana) assailing the Decision<sup>2</sup> dated March 24, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07988, which affirmed the Decision<sup>3</sup> dated August 28, 2015 of the Regional Trial Court of Aparri, Cagayan, Branch 10 (RTC) in Criminal Case No. II-10837, finding accused-appellant Malana guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Facts

An Information<sup>5</sup> was filed against accused-appellant Malana in this case, the accusatory portion of which reads as follows:

<sup>1</sup> See Notice of Appeal dated April 21, 2017; *rollo*, pp. 17-19.  
<sup>2</sup> *Rollo*, pp. 2-16. Penned by Associate Justice Renato C. Francisco, with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios concurring.  
<sup>3</sup> CA *rollo*, pp. 80-91. Penned by Judge Pablo M. Agustin.  
<sup>4</sup> 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).  
<sup>5</sup> Records, p. 1.

That on or about **October 19, 2011**, in the municipality of Camalaniugan, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, without any legal authority thereof, did then and there willfully, unlawfully and feloniously sell, deliver, dispense, give away **one (1) [piece] of heat sealed transparent plastic sachet containing crystalline substance** which gave **POSITIVE** results to the tests for **methamphetamine hydrochloride, a dangerous drug, locally known as SHABU, weighing an aggregate of 0.02 gram** to a poseur buyer of the elements of the **Philippine National Police force** stationed in Camalaniugan, Cagayan, said accused knowing fully well and aware that it is prohibited for any person to sell, deliver, dispense, give away to another or transport any dangerous drugs regardless of the quantity or purity thereof, unless authorized by law.

### **CONTRARY TO LAW.<sup>6</sup>**

Upon arraignment, accused-appellant Malana pleaded not guilty to the charge. Thereafter, pre-trial and trial on the case ensued.<sup>7</sup> The prosecution's version, as summarized by the CA, is as follows:

The prosecution presented three witnesses, namely: SPO1 Kenneth Urian (SPO1 Urian), P/S Insp. Glen Ly Tuazon (P/S Insp. Tuazon) and SPO2 Jessie Alonzo (SPO2 Alonzo).

SPO1 Urian testified that on 18 October 2011, he was on duty at Camalaniugan Police Station. At approximately 1 in the afternoon, an informer reported that a female individual, later identified to be Malana, was engaged in rampant selling of *shabu* at Brgy. Dugo, Camalaniugan, Cagayan. He then relayed the information to Chief of Police P/C Insp. George Cablarda (P/C Insp. Cablarda), who immediately conducted a briefing. This briefing was attended by him, SPO2 Alonzo and P/C Insp. Cablarda to discuss the conduct of an entrapment operation against Malana. The informer, Rex Cortez (Cortez), was designated as the civilian poseur buyer.

Cortez ordered *shabu* worth ₱2,500.00 from Malana to be delivered at Brgy. Dugo, Camalaniugan, Cagayan at 2:30 in the afternoon on the same date. He ordered *shabu* by sending a text message to Malana. Unfortunately, Malana failed to appear. Hence, P/C Insp. Cablarda directed the team to execute another entrapment operation the following day, at the same place and time.

On 19 October 2011, Cortez ordered ₱ 500.00 worth of *shabu* from Malana to be delivered at around 3 in the afternoon. Cortez informed the team that he will meet Malana at a waiting shed in Brgy. Dugo, Camalaniugan, Cagayan.

At around 4:14 in the afternoon, a multicab from Aparri stopped near the designated waiting shed where Malana alighted. SPO1 Urian observed that Cortez and Malana had a brief conversation. Malana then handed something to Cortez, who in turn, handed something to Malana.

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<sup>6</sup> Id.

<sup>7</sup> *Rollo*, p. 3.

From where he was standing, SPO1 Urian could neither identify the things being exchanged by the two individuals because they were covering each other nor did he overhear their conversation. During the entrapment operation, he positioned himself within the perimeter fence of Mr. and Mrs. Manuel Arce, which was about 10 to 12 meters away from the waiting shed, the place of transaction. Meanwhile, the other members of the team stood approximately 4 to 6 meters [a]way from the waiting shed. When Cortez gave the pre-arranged signal, which was the removal of his hat, members of the team ran towards the waiting shed. SPO2 Alonzo immediately frisked Malana and recovered the ₱500.00 marked money. P/C Insp. Cablarda took possession of the plastic sachet containing a white crystalline substance handed by Malana to Cortez.

For documentation, they sought the assistance of Brgy. Captain Philip Arce, and *kagawads* Wilma Gonzaga and Perlita Arellano, who witnessed the inventory as evidenced by the Confiscation Receipt and photographs on record. SPO1 Urian marked the seized plastic sachet with "KDU," his initials. After, they proceeded to the Camalaniugan Police Station and prepared the Request for Laboratory Examination.<sup>8</sup>

On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

On 19 October 2011, she was at her house at San Antonio, Aparri, Cagayan. At noon, Cortez called her demanding that she pay her outstanding debt in the amount of ₱1,500.00. She begged that she be allowed to give half of the amount. Cortez related that his wife was angry and if she could not pay the debt in its entirety, explain herself to his wife.

Cortez called and instructed her to meet them near Vicky's Grocery at Dugo, Camalaniugan. She proceeded to the designated place with her four year old son. At about 2 in the afternoon, she arrived and sent a text message to Cortez. She requested Cortez to hurry as she would be returning home to Aparri, Cagayan after their conversation. Cortez neither replied to her text message nor arrive at the agreed upon meeting place. While anticipating the arrival of Spouses Cortez, she observed three (3) men running towards her at the waiting shed where she stood. She was surprised when one of them remarked, "*BAGIM DAYTOY! BAGIM DAYTOY*" meaning "Is this yours?" while exhibiting a small plastic sachet. She replied "Why are you asking me if that is mine, you are the one holding it?" Then, one of the men approached her, frisked her and stated that she had a ₱500.00 bill in her pocket. She denied this as she only had ₱20.00 for her return fare to Aparri. The men then instructed her to reveal the names of the people whom she knew were engaged in the sale of illegal drugs so that she could be set free. When she failed to provide any names, she was brought to the Camalaniugan Police Station with her son. Soon after their arrival at the police station, she rode another police vehicle and returned to the waiting shed. There, the police officers talked to a person whom they let sign a piece of paper. She and her son were brought to the Aparri Police Station where she asked the police to contact her brother Nanding to fetch her son. Then she was

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<sup>8</sup> Id. at 3-5.

returned to the Camalaniugan Police Station where she was detained for two nights.

On 21 October 2011, she was brought to the Office of the Provincial Prosecutor in Aparri, Cagayan to undergo inquest proceedings for allegedly selling illegal drugs. She denied all the accusations against her.<sup>9</sup>

### **Ruling of the RTC**

After trial on the merits, in its Decision<sup>10</sup> dated August 28, 2015, the RTC convicted accused-appellant Malana of the crime charged. The dispositive portion of the said Decision reads:

**WHEREFORE**, judgment is hereby rendered finding accused NILA MALANA y SAMBOLLEDO **GUILTY** beyond reasonable doubt as charged for violation of Section 5 of Article II of R.A. 9165, (selling of dangerous drug) and she is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand (Php500,000.00) pesos.

The subject matter of this case is hereby forfeited in favor of the government and to be disposed of as provided by law.

**SO DECIDED.**<sup>11</sup>

The RTC ruled that the evidence on record sufficiently established the presence of the elements of illegal sale of dangerous drugs. The RTC gave credence to the testimonies of the apprehending officers to establish that what was conducted against accused-appellant Malana was a valid buy-bust operation. It reasoned that “[c]redence was properly accorded to the testimonies of the prosecution witnesses, who are law enforcers. When police officers have no motive to testify falsely against the accused, courts are inclined to uphold this presumption.”<sup>12</sup> The RTC further stated that the “integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.”<sup>13</sup>

The RTC also said that accused-appellant Malana’s defenses of denial and frame-up were weak defenses, and could not prevail over the positive testimonies of the prosecution witnesses.

Aggrieved, accused-appellant Malana appealed to the CA.

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<sup>9</sup> Id. at 7-8.

<sup>10</sup> CA *rollo*, pp. 80-91.

<sup>11</sup> Id. at 91.

<sup>12</sup> Id. at 89-90.

<sup>13</sup> Id. at 90. Citation omitted.

### **Ruling of the CA**

In the questioned Decision<sup>14</sup> dated March 24, 2017, the CA affirmed the RTC's conviction of accused-appellant Malana, holding that the prosecution was able to prove the elements of the crimes charged. The CA declared that the elements of illegal sale of dangerous drugs were properly established as "RA 9165 and its implementing rules do not require strict compliance with the rule on chain of custody."<sup>15</sup> The CA explained:

x x x While representatives of the media and the Department of Justice were absent, in their place, there were two *kagawads* and Brgy. Captain Philip Arce not to mention, Malana herself to witness the same. As to the absence of other details aside from the initials of SPO1 Urian, neither RA 9165 nor its implementing rules require such matters to be affixed on the seized item. Even assuming *arguendo* that these are required under the Philippine National Police Manual on Illegal Drugs Operation and Investigation, We find that for purposes of maintaining the integrity and evidentiary value of the seized specimen, what takes precedence is compliance with the mandate of RA 9165 which in this case, was substantially complied with.<sup>16</sup>

Hence, the instant appeal.

### **Issue**

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting accused-appellant Malana of the crime charged.

### **The Court's Ruling**

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

Accused-appellant Malana was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, 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.<sup>17</sup>

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

<sup>14</sup> *Rollo*, pp. 2-16.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.* at 13.

<sup>17</sup> *People v. Opiana*, 750 Phil. 140, 147 (2015).

*corpus delicti* of the violation of the law.<sup>18</sup> 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,<sup>19</sup> 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 forensic laboratory to safekeeping to presentation in court for destruction.<sup>20</sup> 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.<sup>21</sup>

In this connection, Section 21,<sup>22</sup> Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, 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) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a 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.”<sup>23</sup>

<sup>18</sup> *People v. Guzon*, 719 Phil. 441, 451 (2013).

<sup>19</sup> *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

<sup>20</sup> *People v. Guzon*, supra note 18, at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

<sup>21</sup> *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

<sup>22</sup> 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[.]

<sup>23</sup> *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

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. 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 planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.<sup>24</sup>

In the present case, none of the three required witnesses was present at the time of seizure and apprehension, and only one of them was present during the conduct of the inventory. As SPO1 Kenneth Urian (SPO1 Urian), part of the apprehending team, testified:

Q: You also said during your direct that you called for the Barangay Council, at what time did this Barangay Council arrived, Mr. witness?

A: Just after the female person was arrested, ma’am.

Q: And after the arrest, Mr. witness, what did you do with the female person?

A: After the documentation ma’am, we immediately brought the female person at the police station.

Q: And during this documentation that you are talking about, who were present at that that (*sic*) time?

A: The Barangay Council, ma’am.

Q: Do you know the person of this Barangay Council, that you are talking about, Mr. witness?

A: Yes, ma’am.

Q: What are the names, Mr. witness?

A: Philip Arce and Barangay Kagawad Wilma Gonzaga and Perlita Arellano, ma’am.

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<sup>24</sup> *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.



- Q: May we know again, what was their participation with respect to the documentation, Mr. witness?
- A: Witness the inventory and documentation of the recovered items, ma'am.<sup>25</sup>

The foregoing testimony was corroborated by the testimony of SPO2 Jessie Alonzo who was also part of the apprehending team.<sup>26</sup> None of the prosecution witnesses offered any explanation as to why two of the three required witnesses — a representative from the DOJ and a media representative — were not present in the buy-bust operation conducted against accused-appellant Malana. The prosecution did not also address the issue in its pleadings and the RTC and the CA instead had to rely only on the presumption that police officers performed their functions in the regular manner to support accused-appellant Malana's conviction.

It bears emphasis that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,<sup>27</sup> the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,<sup>28</sup> 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 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

<sup>25</sup> TSN, October 23, 2012, pp. 16-18.

<sup>26</sup> TSN, August 6, 2013, p. 9.

<sup>27</sup> G.R. No. 228890, April 18, 2018.

<sup>28</sup> 736 Phil. 749 (2014).



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”.<sup>29</sup> (Emphasis, italics and underscoring in the original)

It is important to point out that the apprehending team in this case had more than ample time to comply with the requirements established by law. As SPO1 Urian himself testified, they received the tip from their confidential informant at around 1:00 p.m. on October 18, 2011.<sup>30</sup> They then planned to immediately conduct the buy-bust operation more or less an hour later, but accused-appellant Malana supposedly failed to deliver the *shabu*.<sup>31</sup> Thus, they planned to conduct another buy-bust operation the next day, in which operation accused-appellant Malana was successfully apprehended.<sup>32</sup>

**The officers, therefore, had one whole day to secure the attendance of all the required witnesses. They could thus have complied with the requirements of the law had they intended to.** However, the apprehending officers in this case did not exert even the slightest of efforts to secure the attendance of any of the three required witnesses. In fact, the required witness present — the elected official — was only “called in” after accused-appellant Malana had already been apprehended. Worse, the police officers and the prosecution — during the trial — failed to show or offer any explanation for their deviation from the law.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>33</sup> The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.<sup>34</sup>

<sup>29</sup> *People v. Tomawis*, supra note 27, at 11-12.

<sup>30</sup> TSN, September 17, 2012, p. 4.

<sup>31</sup> See id. at 6.

<sup>32</sup> See id. at 7-11.

<sup>33</sup> *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

<sup>34</sup> *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People*

Verily, courts cannot, as the CA did in this case, make a blanket justification that “[g]iven the nature of [the] operation, it is understandable that [the required witnesses’] immediate presence could not be immediately secured at the place of seizure or the nearest police station.”<sup>35</sup> As the Court held in *People v. De Guzman*,<sup>36</sup> “[t]he justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.”<sup>37</sup>

Moreover, courts cannot rule, as the RTC and the CA did in this case, that the presence of the three elected officials in the inventory (as opposed to the media person and the DOJ official) constitutes substantial compliance with the requirements of RA 9165. Section 21, RA 9165 was unequivocal in its requirement: that the inventory must be done “**in the presence of** the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the [DOJ], and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof.”

The law is plain and clear. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.<sup>38</sup>

It bears stressing that the prosecution has the burden of (1) proving compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*:<sup>39</sup>

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

**(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely**

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*v. Paz*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>35</sup> *Rollo*, pp. 12-13.

<sup>36</sup> 630 Phil. 637 (2010).

<sup>37</sup> *Id.* at 649.

<sup>38</sup> *Relox v. People*, G.R. No. 195694, June 11, 2014 (Unsigned Resolution).

<sup>39</sup> G.R. No. 231989, September 4, 2018.

**on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**<sup>40</sup>  
(Underscoring supplied; emphasis in the original)

In this connection, it was error for both the RTC and the CA to convict accused-appellant Malana 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.**<sup>41</sup> Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.<sup>42</sup> As the Court, in *People v. Catalan*,<sup>43</sup> 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 presumption of regularity of performance in their favor.<sup>44</sup> (Emphasis supplied; italics in the original)

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

<sup>41</sup> *People v. Mendoza*, supra note 28, at 770.

<sup>42</sup> Id.

<sup>43</sup> 699 Phil. 603 (2012).

<sup>44</sup> Id. at 621.

**In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.**

What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual,<sup>45</sup> the conduct of buy-bust operations requires the following:

**ANTI-DRUG OPERATIONAL PROCEDURES**

x x x x

**V. SPECIFIC RULES**

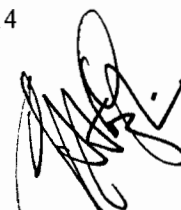
x x x x

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

1. Buy-Bust Operation - in 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;
- 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;

<sup>45</sup> PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.



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. (Emphasis and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui*<sup>46</sup> that it will not presume to set an *a priori* basis on what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.<sup>47</sup>

At this juncture, it is well to point out that while the RTC and the CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict accused-appellant Malana. 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.<sup>48</sup> 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,<sup>49</sup> with each and every element of the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein.<sup>50</sup> Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

<sup>46</sup> 393 Phil. 68, 133 (2000).

<sup>47</sup> *People v. Supat*, G.R. No. 217027, June 6, 2018, pp. 18-19.

<sup>48</sup> 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

<sup>49</sup> 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.]

<sup>50</sup> *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

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*:<sup>51</sup>

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.***<sup>52</sup> (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.

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do so within the bounds of the law.<sup>53</sup> Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachet of *shabu*, the evils of switching, “planting” or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of *shabu* that was evidence herein of the *corpus delicti*. Thus, this adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.<sup>54</sup>

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<sup>51</sup> 745 Phil. 237 (2014).

<sup>52</sup> Id. at 250-251.

<sup>53</sup> *People v. Ramos*, 791 Phil. 162, 175 (2016).

<sup>54</sup> *People v. Mendoza*, supra note 28, at 764.

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 (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.<sup>55</sup> **In this case, the prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165.**

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.<sup>56</sup> As the Court explained in *People v. Reyes*:<sup>57</sup>

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution’s case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x<sup>58</sup>

In *People v. Umipang*,<sup>59</sup> 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 witness 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.

<sup>55</sup> See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

<sup>56</sup> See *People v. Sumili*, 753 Phil. 342, 350 (2015).

<sup>57</sup> 797 Phil. 671 (2016).

<sup>58</sup> Id. at 690.

<sup>59</sup> 686 Phil. 1024 (2012).


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 there was a justifiable ground for failing to do so.**<sup>60</sup> (Emphasis and underscoring supplied)

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* has thus been compromised. In light of this, accused-appellant Malana must perforce be acquitted.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated March 24, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07988 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Nila Malana y Sambolledo** is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she 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 Correctional Institution for Women, Mandaluyong 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 she has taken.

**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>60</sup> Id. at 1052-1053.



WE CONCUR:

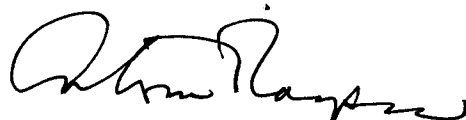


**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice  
**ANDRES B. REYES, JR.**  
Associate Justice  
**ROSMARI D. CARANDANG**  
Associate Justice

**ATTESTATION**


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



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
Chief Justice

