



Republic of the Philippines
SUPREME COURT
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPATAN
 Division Clerk of Court
 Third Division

AUG 02 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 237804

Present:

- versus -

VELASCO, JR., J., Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

MERCINDO BOBOTIOK, JR. y
LONTOC,

Promulgated:

Accused-Appellant.

July 4, 2018

x----------x

DECISION

VELASCO, JR., J.:

The Case

Before the Court is an ordinary appeal¹ filed by accused-appellant Mercindo Bobotiook, Jr. y Lontoc (Bobotiook Jr.) assailing the Decision² dated December 11, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 09066, which affirmed with modification the Judgment dated January 30, 2017 of the Regional Trial Court, Branch 267, Pasig City, finding accused-appellant guilty beyond reasonable doubt of illegal delivery of *shabu* penalized under Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In an Information³ dated February 2, 2011, accused-appellant was charged with violation of Section 5, paragraph 1, Article II of RA 9165, the accusatory portion of which reads:

¹ See Notice of Appeal dated January 4, 2018; *rollo*, pp. 102-103.

² *Rollo*, pp. 2-18. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh.

³ Records, p. 1.

That, on or about the 1st day of February 2011, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to **PO1 Jerry V. Balbin**, who acted as police poseur buyer, one (1) small heat-sealed transparent plastic sachet, marked with **JVB-010211** containing **zero point thirteen (0.13) grams**, of white crystalline substance, for and in consideration of the amount of **Php.500.00**, which substance was found positive to the test for *Methylamphetamine hydrochloride*, commonly known as "*Shabu*"[,], a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁴

During arraignment, accused-appellant, assisted by his counsel *de officio*, entered a plea of not guilty to the charge.⁵ The mandatory pre-trial conference was terminated on March 14, 2011 and trial on the merits ensued thereafter.⁶

Version of the Prosecution

The prosecution presented four (4) witnesses, namely: 1) Police Officer 1 (PO1) Jerry Balbin, the poseur-buyer; 2) Police Chief Inspector (PCI) Richard Allan Mangalip, the Forensic Chemical Officer; 3) Police Officer 2 (PO2) Roel Medrano; and 4) PO2 Vergelio del Rosario, the police investigator. The testimony of PCI Mangalip was, however, dispensed with in view of the stipulation of facts entered into by the public prosecutor and the defense counsel.⁷ Similarly, the testimonies of PO2 Medrano and PO2 del Rosario were likewise dispensed with, but this time, for being merely corroborative of the testimony of PO1 Balbin.⁸

PO1 Balbin testified that sometime around 9 o'clock in the morning of February 1, 2011, a confidential informant went to the office of the Station Anti-Illegal Drug Special Operation Task Group (SAID SOTG) of Taguig City Police Station to report the illegal drug activities of a certain Zenell Cruz along Dr. Natividad Street in Tipas, Taguig City.⁹ The confidential informant spoke with Team Leader PCI Mihilan Abu Payao, who then conducted a briefing with the other members of the buy-bust team, namely: SPO2 Sanchez, PO3 Medrano, PO3 Antillon, PO3 Briones, PO3 More, and PO1 Balbin.¹⁰

Coordination with the Philippine Drug Enforcement Agency (PDEA) was made by the buy-bust team whereby a Pre-Operation Report and a Coordination Form were prepared and sent to the PDEA. Upon receipt of

⁴ Id.

⁵ Id. at 30.

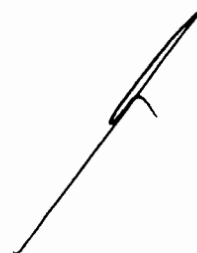
⁶ Id. at 39.

⁷ Transcript of Stenographic Notes (TSN) dated May 11, 2011, pp. 1-7.

⁸ *Rollo*, pp. 4-6.

⁹ TSN, June 13, 2013, pp. 4-6.

¹⁰ Id. at 4, 6.



the documents, the PDEA faxed Control Number MMRO-0211-00007 authorizing the buy-bust team to proceed with the operation.¹¹

During the briefing, PO1 Balbin was assigned as the poseur-buyer and was given one (1) Five Hundred Peso (P500.00) bill marked with "MP" to be used as the buy-bust money. PO2 Medrano was assigned as the immediate back-up of PO1 Balbin who would await the pre-arranged signal and assist in arresting the accused, while the others served as perimeter back-up. The pre-arranged signal was the scratching at the back of the head of PO1 Balbin. They also discussed the jump-off of the buy-bust team, wherein they would be using four vehicles to proceed to the area.¹²

PO1 Balbin narrated how the confidential informant arranged through text messages the meeting with Zenell Cruz. Upon receiving the go signal from Zenell Cruz sometime around 6:45 that night, the buy-bust team proceeded to the meeting place at Ibayo, Tipas, Taguig City and arrived at the area at around 7:00 p.m. PO1 Balbin and the confidential informant alighted from the vehicle and walked about fifty meters along Dr. Natividad Street.¹³

Before they could make a turn into an alley to meet Zenell Cruz, a male person, who was subsequently identified as accused-appellant, approached and asked them if they were the ones whom Zenell Cruz were texting with, to which the confidential informant replied, "*Oo, kami po.*" Accused-appellant told them, "*Wala si Zenell. May pinuntahang importante,*" then he handed a small transparent plastic sachet containing white crystalline substance to PO1 Balbin. PO1 Balbin pinched the plastic sachet to find out if it was brittle. Upon verification of the contents thereof, PO1 Balbin scratched the back of his head prompting PO2 Medrano to rush towards the crime scene. PO1 Balbin immediately grabbed accused-appellant, introduced himself as a police officer, and apprised accused-appellant of his constitutional rights.¹⁴ PO1 Balbin then marked the plastic sachet with "JVB-010211," representing his initials and the date of the incident, while in the presence of accused-appellant. The buy bust team then brought the accused-appellant and the confiscated dangerous drugs to their office.¹⁵

Upon arrival at the police station, PO1 Balbin made the inventory in the presence of accused-appellant and the buy-bust team, then accomplished the Chain of Custody Form and the Turnover of Arrested Suspect. He thereafter turned over the confiscated drugs to investigator PO2 Vergelio P. del Rosario who prepared a Spot Report, Booking and Information Sheet, and an Affidavit of Arrest duly signed by PO1 Balbin and PO2 Medrano.¹⁶

¹¹ Id. at 9-10; TSN, March 3, 2016, p. 3; TSN, August 18, 2016, p. 7.

¹² TSN, June 13, 2013, pp. 7-10.

¹³ Id. at 11-12.

¹⁴ Id. at 13-16.

¹⁵ Id. at 19-20.

¹⁶ TSN, July 30, 2014, pp. 3-7.

PO2 Del Rosario also took photographs of the seized dangerous drugs, as witnessed by PO1 Balbin.¹⁷

Based on the stipulations by the parties, it appears that PO3 Del Rosario prepared the affidavit of arrest of accused-appellant, as well as the request for laboratory examination of the confiscated white crystalline substance and the drug test of accused-appellant,¹⁸ addressed to the Southern Police District Crime Laboratory Office to determine the presence of any form of dangerous drugs in the seized item.¹⁹ PO2 del Rosario, accompanied by PO1 Balbin and in the presence of accused-appellant, personally delivered the letter-request and the confiscated item to the PNP Crime Laboratory where they were received at 10:00 p.m. of February 1, 2011.²⁰

The specimen was turned over to the Forensic Chemical Officer, PCI Mangalip, whose testimony was dispensed with after the stipulations by the parties. The parties stipulated, among others, that PCI Mangalip conducted a laboratory examination on one heat-sealed transparent plastic sachet marked as "JVB-010211" containing 0.13 gram of white crystalline substance and that Physical Science Report No. D-053-11S dated February 2, 2011 showed that the specimen gave a positive result for the presence of methylamphetamine hydrochloride or *shabu*.²¹

Version of the Defense

The defense presented accused-appellant and Rexel Lagui as their witnesses.

Accused-appellant testified that at 4:30 in the afternoon of January 30, 2011, he was with a certain Andrian Lizertiguez betting at the Pateros Cockpit where he was serving as a *kristo*. On their way home, after accused-appellant and his companion had boarded a tricycle, two armed men in civilian clothes rode on the back portion of the vehicle. Accused-appellant later discovered that the two men were police officers.²²

As the tricycle approached the Garden of Memories, along the boundary of Pateros and Taguig, accused-appellant and Lizertiguez were asked to alight from the tricycle and were frisked by the police officers. They were then handcuffed and transferred to the vehicle which arrived and were brought to the Drug Enforcement Unit Office at the Taguig City Hall.²³

¹⁷ Id. at 8-9.

¹⁸ TSN, August 18, 2016, pp. 3-4.

¹⁹ Id. at 8-9.

²⁰ TSN, July 30, 2014, p. 10.

²¹ TSN, May 11, 2011, pp. 2-6.

²² TSN, October 6, 2016, pp. 3-4.

²³ Id. at 5-6.

Accused-appellant claimed that while at the Taguig City Hall, the police officers demanded Php100,000.00 from them, with a warning that if they fail to produce such amount, they will be charged with violation of Section 5, Article II of R.A. 9165. While both of them were not able to give the money, only Lizertiguez was allowed to go home while accused-appellant remained in detention. According to accused-appellant, the police officers let his companion leave so that the latter could inform the wife of accused-appellant of his arrest and the amount which needed to be paid.²⁴

Rexel Lagui, the purported driver of the tricycle which accused-appellant claims to have boarded at the time of the incident, confirmed that accused-appellant was his passenger in the afternoon of January 3, 2011 when two men suddenly boarded the vehicle and ordered him to stop at the Garden of Memories. Once stopped, a red vehicle arrived and accused-appellant was dragged inside the vehicle.²⁵

Ruling of the Regional Trial Court

In a Judgment²⁶ dated January 30, 2017, the trial court found accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs, the dispositive portion of which reads:

WHEREFORE, based on the foregoing dissertation of the court, the court finds accused Mercindo Bobotiok, Jr. y Lontoc **Guilty** beyond reasonable doubt for violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165 under Criminal Case No. 17417-D-TG and judgment is hereby rendered that he should suffer the penalty of **Life Imprisonment** and to pay a **Fine** in the amount of Five Hundred Thousand Pesos (Php500,000.00).

The Jail Warden of the Taguig City Jail is hereby directed to commit the above named accused to the custody of the Bureau of Prisons, Muntinlupa City.

Let the illegal drugs subject of the instant case be turned over to the PDEA to be destroyed in the manner provided by law.

SO ORDERED.

The trial court ruled that all elements of illegal sale of dangerous drugs were present in this case. It found credibility in the testimony of prosecution witnesses PO1 Balbin and PO3 Medrano, that accused-appellant, whose identity was then unknown to them, sold to PO1 Balbin and the confidential informant an illegal drug contained in a transparent plastic sachet sometime between 6:00 and 7:00 in the evening of February 1, 2011. Even though PO1 Balbin was unable to give the marked money to accused-appellant, the trial court held that the omission was not fatal since

²⁴ Id. at 7-9.

²⁵ TSN, December 12, 2016, pp. 4-6.

²⁶ Records, pp. 161-172. Rendered by Judge Antonio M. Olivete.

PO1 Balbin was ready to hand over the same at that time except that he may have forgotten to do so.²⁷

Aside from this, the trial court found that the prosecution was able to establish that the chain of custody of the seized drugs remained unbroken, as evidenced by the duly signed Chain of Custody Form. Although the inventory lacked the required witnesses, the trial court ruled that there was sufficient justifiable ground to excuse the prosecution from compliance thereon since the police operatives exerted efforts to secure the said witnesses, albeit in vain.²⁸

It further ruled that the prosecution was able to demonstrate that the integrity and evidentiary value of the evidence seized had been preserved; thus, there was no break in the chain of custody of the seized drugs. Moreover, the trial court declared that the presumption that the integrity of the evidence has been preserved will remain unless there was a showing of bad faith, ill will, or tampering of evidence, which was not shown or overcome by accused-appellant.²⁹

Accordingly, accused-appellant elevated the case on appeal to the CA.

Ruling of the Court of Appeals

In the assailed Decision, the CA affirmed the findings of the trial court, to wit:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Judgment dated January 30, 2017 of the Regional Trial Court, Branch 267, Pasig City is **AFFIRMED with MODIFICATION** in that appellant Mercindo Bobotiok, Jr. y Lontoc is found guilty beyond reasonable doubt of illegal delivery of shabu penalized under Section 5, Article II of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

SO ORDERED.³⁰

The CA sustained the conviction of accused-appellant under Section 5, Article II of RA 9165, albeit on a different ground. Based on the evidence presented, the CA found that accused-appellant cannot be convicted of illegal sale of dangerous drugs since PO1 Balbin failed to effect payment and no sale was consummated. Instead, the CA declared that accused-appellant may still be convicted for the illegal delivery of shabu under the same provision of law, the elements of which were found by the appellate court to be present in this case.³¹

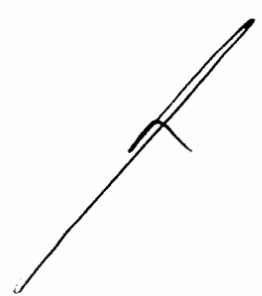
²⁷ Id. at 167.

²⁸ Id. at 168-170.

²⁹ Id. at 21-22.

³⁰ *Rolló*, p. 18.

³¹ Id. at 13-14.



As for the claim that the prosecution failed to establish the chain of custody and that there was a non-compliance with the requirements set forth under Section 21 of RA 9165, the appellate court held that there was no break in the chain of custody of the seized dangerous drugs and that its integrity and evidentiary value was properly preserved. Finally, the CA affirmed the penalty imposed by the trial court despite the modification in the crime charged.³²

Hence, this appeal.

The Issue

The issue in this case is whether the CA erred in affirming accused-appellant's conviction.

The Court's Ruling

We find the appeal meritorious.

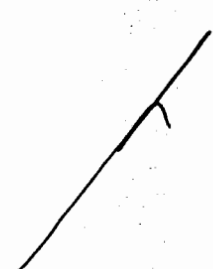
The elements of illegal delivery of dangerous drugs are present in the instant case

Accused-appellant was charged with selling, delivering, and giving away dangerous drugs under Section 5, Article II of RA 9165, which reads:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, **deliver, give away to another**, distribute dispatch in transit or transport **any dangerous drug**, including any and all species of opium poppy **regardless of the quantity and purity involved**, or shall act as a broker in any of such transactions. x x x (emphasis supplied)

As correctly found by the appellate court, accused-appellant could not be charged or convicted for the illegal sale of dangerous drugs due to the fact that the poseur-buyer, PO1 Balbin, failed to effect payment for the drugs handed to him by accused-appellant. It appears that PO1 Balbin was caught off-guard when it was accused-appellant who approached them and handed over the plastic sachet containing a white crystalline substance, when he was expecting a person named Zenell Cruz. In the confusion, PO1 Balbin immediately executed the pre-arranged hand signal and proceeded to arrest the accused-appellant without giving the latter the opportunity to ask for payment or to receive the marked money as payment.

³² Id. at 15-17.



Nevertheless, We agree with the findings of the CA that accused-appellant's actions may still be prosecuted under Section 5 as the prohibited act of delivering or distributing prohibited drugs. The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Thus, delivery may be committed even without consideration.³³

In the present case, the prosecution was able to establish that accused-appellant knowingly delivered the prohibited substance methylamphetamine hydrochloride (*shabu*) to the poseur-buyer without any authorization by law and that the police operatives confiscated the same. This was clear in the testimony of prosecution witness PO1 Balbin, *viz*:

PROSECUTOR VILLENA: And after that, what happened?

A: After that, somebody approached us. Before we went to an alley going to the house of Zenell Cruz, we were met by a male person, sir.

PROSECUTOR VILLENA: What did this male guy tell you or your informant?

A: We were told na wala daw po si Zenell Cruz at ipinagbilin na lang ni Zenell Cruz na may iniwan at ibigay sa amin, sir.

PROSECUTOR VILLENA: What was your response?

A: I told him na yong binilin niya ay kukunin na lang namin.

x x x x

PROSECUTOR VILLENA: This person knew your informant?

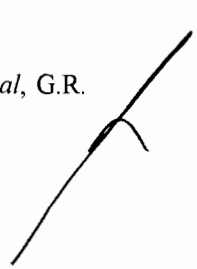
A: No, sir. Si Zenell Cruz po, sir, ay may taong pinagbilinan at 'yon po ang sumalubong sa amin.

x x x x

PROSECUTOR VILLENA: What was your conversation? Okay, so you saw this person.

A: When we arrived there, he asked us if we were the textmates of Zenell.

³³ *People of the Philippines v. Michael Maongco y Yumonda and Phans Bandali y Simpall*, G.R. No. 196966, October 23, 2013.



PROSECUTOR VILLENA: You were asked. And what was your response?

A: The informant told him, "Oo, kami po".

PROSECUTOR VILLENA: After that, what did the person tell you?

A: He told us, "Wala si Zenell. May pinuntahang importante" and then **he gave us the shabu.**

PROSECUTOR VILLENA: To whom did this person give the drugs?

A: I was the one who got the shabu.

PROSECUTOR VILLENA: What was the exact item that was given to you? How did it look like?

A: Small transparent plastic sachet.

PROSECUTOR VILLENA: So the contents, how did it look like?

A: White crystalline substance, sir.

PROSECUTOR VILLENA: What exactly did you do after receiving that?

A: I pinched it, sir.

PROSECUTOR VILLENA: Why did you pinch it?


A: I tried to see if it's brittle. When I found out that it's brittle, I executed the pre-arranged signal.

PROSECUTOR VILLENA: When it's brittle, what would it signify?

A: Shabu is brittle, sir.³⁴
(emphasis supplied)

From PO1 Balbin's testimony, it is clear that accused-appellant deliberately sought out the confidential informant for the purpose of handing over the small transparent plastic sachet containing the white crystalline substance which was later proven to be *shabu*. When he confirmed that the confidential informant and PO1 Balbin were the ones whom Zenell Cruz was supposed to meet with, he voluntarily gave them the dangerous drugs, although he had no authority under the law to deliver or distribute the same.

³⁴ TSN, June 13, 2013, pp. 13-15.



Accused-appellant's defense of "frame up" holds no water since he failed to prove any ill motive on the part of the apprehending officers so as to incriminate him for the crime charged. While the defense presented the testimony of Rexel Laqui who was supposedly the driver of the tricycle which accused-appellant claims to have been riding at the time of his arrest, it did not prove the alleged "frame-up." Instead, it cast even more doubt on the credibility of the defense since nowhere in Laqui's testimony was it mentioned that accused-appellant had a companion at the time he was arrested. On this point, Laqui's testimony contradicted accused-appellant's own testimony, instead of corroborating the latter.

Based on the foregoing, We find that the CA was correct in ruling that crime of illegal delivery of dangerous drugs under Section 5, Article II of RA 9165 was committed by accused-appellant. However, this Court finds that there were missing links in the chain of custody of the seized items.

The prosecution did not establish compliance with the chain of custody rule and Section 21 of RA 9165

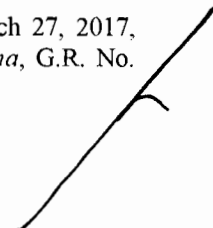
Accused-appellant hinges his appeal on the alleged failure of the prosecution to establish a continuous and unbroken chain of custody of the seized illegal drug and the lack of integrity of the evidence in view of the non-compliance with Section 21, Article II of RA 9165.

Chain of custody is defined as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction.³⁵

Section 21, Article II of RA 9165 outlines the procedural safeguards that police officers must follow in handling seized illegal drugs to preserve their identity, integrity, and evidentiary value, the pertinent portions of which read:

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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

³⁵ *People of the Philippines v. Myrna Gayoso y Arguelles*, G.R. No. 206590, March 27, 2017, citing *People of the Philippines v. Fernando Ranche Havana a.k.a. Fernando Ranche Abana*, G.R. No. 198450, January 11, 2016, 778 SCRA 524, 534-535.



(1) The apprehending team having initial custody and control of the dangerous drugs x x x shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, finally*, That **noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.** (emphasis supplied)

In the case before Us, the records show that the buy-bust team had failed to strictly comply with the prescribed procedure under Section 21, par. 1. To explain the procedure undertaken by the buy-bust team, PO1 Balbin testified, thus:

PROSECUTOR VILLENA: What did you do upon your arrival in your office?

A: I made the inventory, sir, and then, after the inventory sir, I turned over the chain of custody, sir, then the arrested suspect, sir.

PROSECUTOR VILLENA: Why did you opt to make your inventory in your office rather than in the place where you arrested the accused?

A: Because it's a little bit dark in the area.

PROSECUTOR VILLENA: What's wrong with the darkness surrounding that place?

A: We cannot clearly see what's around us.

PROSECUTOR VILLENA: Okay and for what purpose you have to see those people around you?

A: For security reason, sir.

PROSECUTOR VILLENA: So for security?

A: Yes, sir.



PROSECUTOR VILLENA: So, who were present at the time you made your inventory in the office?

A: Our team leader, sir, the suspect, the investigator and our teammates, sir.

PROSECUTOR VILLENA: **Why only those persons that you have mentioned were present during the inventory and no other persons like media representatives, elective officials or DOJ representatives?**

A: **None, sir, because our team leader P/CInsp. Payao tried to call the media and the Barangay but no one arrived at our office.**

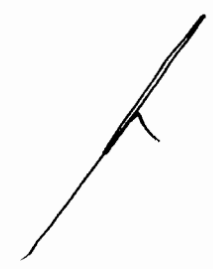
PROSECUTOR VILLENA: **So how long did you wait for their arrival before you conducted your inventory?**

A: **Almost thirty (30) minutes, sir.**³⁶
(emphasis supplied)

The prosecution justified the conduct of the inventory and photograph of the seized item at the police station instead of the place of the buy-bust operation by raising the issue of security. However, a reading of the transcript of PO1 Balbin's testimony reveals that this justification is a mere afterthought since his initial reason is the darkness of the place of arrest. It was only after the diligent prodding by the public prosecutor that PO1 Balbin mentioned the risk of security. Other than this statement, nowhere in the records was it shown that there was any actual threat or risk taken by the buy-bust team during the arrest that had actually prevented them from conducting the inventory and photographing of the seized drugs.

Even assuming *arguendo* that the buy-bust team's act of conducting the inventory and photographing of the seized drugs at the police station was justified, it still suffered from a major procedural lapse since it was not done in the presence of any elected public official, a representative of the National Prosecution Service, or the media. While such requirement, under justifiable reasons, shall not render void the seizure of the subject item, the prosecution must nonetheless explain its failure to abide by such procedural requirement, and show that the integrity and evidentiary value of the seized item was preserved.

³⁶ TSN, July 30, 2014, pp. 3-4.



When asked the reason for the non-compliance with the requirement of witnesses, PO1 Balbin reasoned that his team leader called the Barangay and the media, but no one arrived despite waiting for their arrival for 30 minutes. While there may have been an effort to contact the media and the Barangay, it was never mentioned, however, if the buy-bust team had also requested for the presence of a representative from the Department of Justice. On this matter, no such explanation was offered by the prosecution for its non-compliance with Section 21 of RA 9165.

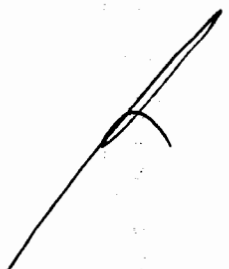
The Court notes that the buy-bust team had more than thirty minutes to secure the attendance of the required witnesses during the inventory and photographing of the seized items. As testified by PO1 Balbin, the confidential informant arrived at the SAID-SOTG office as early as 9:00 o'clock in the morning of February 1, 2011. However, the actual buy-bust operation was conducted at 7:00 o'clock in the evening of the same day. Thus, they had at least ten hours from the time they received the tip until the buy-bust team proceeded to the agreed location. This appears to be more than enough time for the buy-bust team to contact and request for the presence of the required witnesses.

Another missing link in the chain of custody in the present case is the details on the preservation of the seized item from its turnover from the police station to the crime laboratory, and the turnover and submission of the same from the crime laboratory to the court, as only the following facts were stipulated:

At today's hearing, the parties appeared.

The witness for the prosecution was PCI Richard Allan Mangalip. The witness did not anymore take the witness stand and the parties have agreed to stipulate on the nature of his testimony. The parties have stipulated on the following: that the witness is a bonafide member of the Philippine National Police assigned at Crime Laboratory Office of the Southern Police District; that he is an expert witness in the field of examination of dangerous drugs particularly methylamphetamine hydrochloride; that on February 1, 2011, his office received a request for laboratory examination from the Station Anti-Illegal Drugs, Special Operation Task Group of the Taguig City Police Station; that upon receipt of the request, said witness subjected the specimen contained in one (1) heat-sealed transparent plastic sachet with markings "JVB-010211" containing 0.13 gram of white crystalline substance for qualitative examination that the result gave positive result to the test for methylamphetamine hydrochloride; and that the findings of the witness was reduced into writing under Physical Science Report No. D-053-11S. For his part and by way of counter stipulation, Atty. Rommel Asuncion manifested that the said witness has no personal knowledge as to the commission of the crime and that he has also no personal knowledge that those items examined were the same shabu recovered from the accused.³⁷

³⁷ Records, p. 43; Order dated May 11, 2011.



At today's hearing, the parties appeared.

PO3 Roel Medrano was the witness for the prosecution. He was the immediate back-up officer in the buy bust operation conducted in the herein case.

Considering his participation as a back-up officer, the parties decided to stipulate on the nature of his testimony, as follows:

x x x x

12. That he was also present during the time that the poseur buyer conducted the inventory which inventory is marked as **Exhibit "D"**;

13. That he also saw the poseur buyer, who was in custody of the drugs, turned over the same to PO2 Vergelio del Rosario, who was the Investigator-on-Case;

14. That he was also present when photos were taken which photos were marked as **Exhibits "J" to "J-1"**;

15. That he was also present during the inquest proceedings;

16. That the drugs the witness saw the poseur buyer, PO1 Jerry Balbin, already in possession when he responded to the pre-arranged signal and the drugs that he saw PO1 Balbin turning over to their investigation are the same drugs subject-matter of this case x x x.³⁸

At today's hearing, the parties appeared.

The witness for the prosecution was PO3 Vergelio Del Rosario.

Being the investigator on the case, the parties agreed to stipulate on his intended testimony. They stipulated as follows: x x x that he was the designated investigator with whom the accused was presented for investigation after his apprehension; that in the course of the investigation conducted by the said witness, he prepared the affidavit of arrest of arresting officer marked as Exhibit "A" during the pre-trial; that the witness likewise made the request for laboratory examination and drug test of the accused, the laboratory examination was marked as Exhibit "M" whereas, the drug test was marked as Exhibit "L" during the pre-trial; that the witness also prepared the chain of custody form marked as Exhibit "G", the turn-over of arrested suspect marked as Exhibit "F", the turn-over of evidence marked as Exhibit "E", the inventory of seized and/or properties from the accused marked as Exhibit "D" including the affidavit of attestation which was marked as Exhibit "K"; that the witness also prepared the coordination form marked as Exhibit "C" and the pre-operation report marked as Exhibit "B"; that the witness also prepared the spot report marked as Exhibit "H", the booking sheet pertaining to Bobotiok marked as Exhibit "I" and he was the person who took the photograph of the accused including the evidence recovered from him marked as Exhibits "J" and "J-1". The defense admitted the same. The defense on the other hand offered as counter-stipulation, that the witness

³⁸ Id. at 125-126; Order dated March 3, 2016.

has no personal knowledge as to the arrest of the accused and as to the source of the illegal drugs turned-over to him.³⁹ x x x

In dispensing with the testimonies of Forensic Chemical Officer PCI Mangalip, Investigating Officer PO2 Medrano, and PO2 del Rosario, the prosecution failed to show every link of the chain of custody. Without the testimonies or stipulations stating the details on when and how the seized plastic sachet was brought to the crime laboratory, and thereafter, to the court for the prosecution's presentation of evidence, the Court cannot ascertain whether the seized drug presented in evidence during trial was the same item seized from accused-appellant when he was arrested. These gaps in the chain of custody create doubt as to whether the *corpus delicti* of the crime had been properly preserved.

Time and again, this Court had taken judicial notice that buy-bust operations are "susceptible to police abuse, the most notorious of which is its use as a tool for extortion." Considering the gravity of the crime and the corresponding penalties thereof, procedural safeguards such as those specified under Section 21 of RA 9165 are provided in cases involving dangerous drugs in order to protect the innocent from abuse and to ensure the preservation of the integrity of evidence.⁴⁰

WHEREFORE, the appeal is **GRANTED**. The Decision dated December 11, 2017 of the Court of Appeals in CA-G.R. CR No. 09066, which affirmed with modification the Judgment dated January 30, 2017 of the Regional Trial Court, Branch 267, Pasig City in Criminal Case No. 17417-D-TG, is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Mercindo Bobotiok, Jr. y Lontoc is **ACQUITTED** of the charge of violation of Section 5, Article II of Republic Act No. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt. His immediate **RELEASE** from detention is hereby ordered, unless he is being held for another lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from his receipt of this Decision.

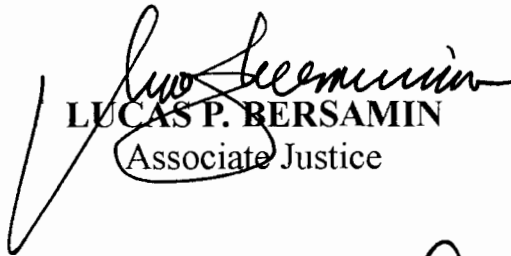
SO ORDERED.

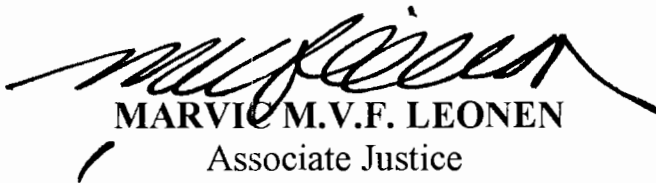

PRESBITERO J. VELASCO, JR.
Associate Justice

³⁹ Id. at 151-152; Order dated August 18, 2016.

⁴⁰ *People of the Philippines v. Eddie Barte y Mendoza*, G.R. No. 179749, March 1, 2017.

WE CONCUR:


LUCAS P. BERSAMIN
 Associate Justice

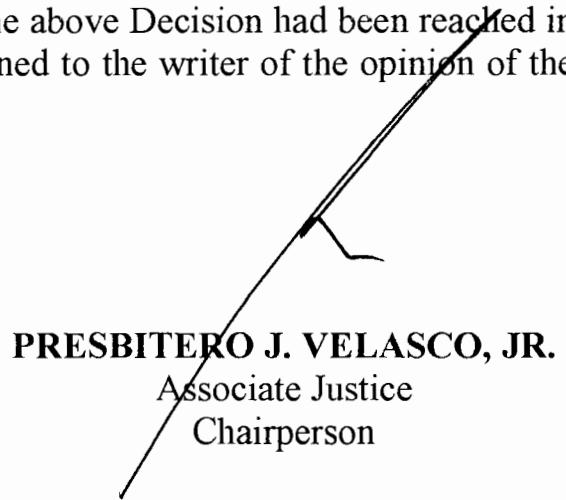

MARVIC M.V.F. LEONEN
 Associate Justice


SAMUEL R. MARTIRES
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice

ATTESTATION

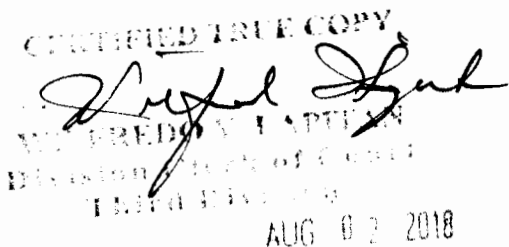
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

CERTIFICATION

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


ANTONIO T. CARPIO
 Acting Chief Justice

CERTIFIED TRUE COPY

FREDRICK L. LANTION
 Division Clerk of Court
 THIRD DIVISION
 AUG 02 2018