



Republic of the Philippines
Supreme Court
Manila
SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 232357

Present:

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

- versus -

EDWIN CABEZUDO y RIEZA,
Accused-Appellant.

Promulgated:

28 NOV 2018

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DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by the accused-appellant Edwin Cabezudo y Rieza (Cabezudo) assailing the Decision² dated November 16, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07071, which affirmed the Decision³ dated June 10, 2014 of the Regional Trial Court of Daet, Camarines Norte, Branch 39 (RTC) in Criminal Case No. 14882, finding Cabezudo guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts

An Information⁵ was filed against Cabezudo in this case, the accusatory portion of which reads as follows:

* On wellness leave.
** Designated additional Member per Special Order No. 2587 dated August 28, 2018.
¹ See Notice of Appeal dated November 28, 2016, *rollo*, pp. 20-23.
² *Rollo*, pp. 2-19. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring.
³ CA *rollo*, pp. 42-50. Penned by Judge Winston S. Racoma.
⁴ Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).
⁵ Records, p. 1.

“That on or about 12:20 in the afternoon of August 16, 2011 in Brgy. Palanas, [M]unicipality of Paracale, [P]rovince of Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously sell to a poseur-buyer one (1) plastic sachet containing white crystalline substance weighing more or less 0.10 grams, which when subjected to laboratory examination turned positive for methamphetamine hydrochloride or shabu, a dangerous drug, as stated in Chemistry Report No. D-85-11, without authority of law.”

CONTRARY TO LAW.⁶

Upon arraignment, Cabezudo pleaded not guilty to the charge. Thereafter, pre-trial and joint trial on the cases ensued.⁷ The prosecution’s version, as summarized by the CA, is as follows:

At about 9:30 in the morning of August 16, 2011, a confidential informant (CI) went to the Office of the [Philippine] Drug Enforcement Agency (PDEA) Camarines Norte Unit and informed the officers therein that accused-appellant is engaged in illegal drug trade in Paracale, Camarines Norte. A verification from PDEA office files revealed that accused-appellant is included in the watchlist. SO2 Christopher Viaña asked the CI if he can contact accused-appellant so that they can buy shabu from him. When the CI agreed, the buy-bust team decided to conduct an entrapment operation against accused-appellant. SO2 Viaña was designated as the arresting officer while SI2 Erwin Magpantay as the poseur-buyer. The plan is to buy a Php 500.00 worth of shabu.

Before leaving, SO2 Viaña prepared the Pre-Operation Report and forwarded the same to the Regional Office for coordination. At around 11:00 o’clock in the morning, they proceeded to Brgy. Palanas, Paracale, Camarines Norte to entrap accused-appellant. The CI and SI2 Magpantay waited in a store near a cockpit while others strategically positioned themselves waiting for the pre-arranged signal. At around 12:20 in the afternoon, accused-appellant arrived and alighted from a tricycle. The CI approached the latter and they talked. Then, the CI introduced accused-appellant to SI2 Magpantay. Accused-appellant asked the latter to walk further in an attempt to conceal the sale. While walking, he handed to SI2 Magpantay a sachet containing white crystalline substance. In exchange, SI2 Magpantay gave the Php 500.00 to him. After the sale was consummated, he raised his bull cap as a pre-arranged signal to the other officers for them to arrest accused-appellant. Immediately, SO2 Viaña and the rest of the team rushed to the area and arrested him. The latter tried to resist but was subdued by the team. The arrest resulted to the recovery of eleven(11) pieces of Php 1,000.00 bills and fourteen (14) pieces of Php 500.00 bills, and one (1) plastic shachet (*sic*) containing white crystalline substance believed to be shabu. SI2 Magpantay confiscated other bills as he believed that the same were proceeds of accused-appellant’s illegal drug activities.

At the scene of the crime, SI2 Magpantay marked the confiscated items. Other members of the team photographed the accused and the

⁶ Id.

⁷ *Rollo*, p. 3.

seized items. Later on, they transferred to the barangay hall where the witnesses (Barangay Chairman and the representatives from the media and DOJ) signed the inventory report. SI2 Magpantay was in possession of the seized drugs from Brgy. Palanan to the Office of PDEA until the same were delivered to the laboratory for examination. PCI Grace Tugas conducted laboratory examination of the seized white crystalline substance which yielded a positive result for methamp[h]etamine hydrochloride or shabu. After the examination, she placed the shabu in an envelope with her integrity seal (masking tape sealed with her signature) and kept the same together with other documents in a steel cabinet. The shabu and other confiscated items were presented in court and positively identified by the witnesses for the prosecution.⁸

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

Accused-appellant told a different story. He claimed that at around 9:00 o'clock in the morning of August 16, 2011, he was in Talisay, Camarines Norte looking for somebody to accompany him to Paracale, Camarines Norte to redeem his motorcycle that was impounded by the PNP. He was able to convince his friend Ruel to go with him. At around 12:00 noon, they arrived at PNP Office in Paracale. There, he was required to pay fine at the Office of the Municipal Treasurer in the Municipal Hall. He paid the said fine. However, instead of getting first his motorcycle, they proceeded to Paracale Cockpit on board a tricycle. When he alighted from the tricycle, a man suddenly wrapped his arm around his neck and pulled him from behind. He noticed another man running and trying to put something in his pocket. This allegedly prompted him to shout, "*Ruel tulong, tinaniman ako[.]*" The men handcuffed him and pushed him down to the ground. While he was frisked, someone got his money amounting to Php 18,000.00.

Thereafter, he was brought to the Barangay Hall of Palanas, Paracale where he was made to wait for the *Punong Barangay*. At around 1:00 o'clock in the afternoon, the *Punong Barangay* arrived. Accused-appellant requested the latter to put on record the confiscation of the amount of Php 18,000.00 from him by SO2 Viaña.

At 3:00 o'clock in the afternoon, a representative from the DOJ arrived. That was the time that he saw the arresting group and the representatives signed a document.

After his arrest, he was brought to Daet, Camarines Norte. While on their way, SO2 Viaña allegedly told him to produce the amount of Php 100,000.00. He replied that he has no means of producing the same as he was merely engaged in buying and selling birds nests. SO2 Viaña replied, "*Magkano ang kaya mo, para wala nang problema, pera pera lang naman eto[.]*" He told him that he is willing to add the amount of Php 60,000.00 to the Php 18,000.00 that has been confiscated from him. Viaña allegedly replied that they have to talk it over at the office but they have not yet agreed anything at that moment. At the PDEA office, he texted his wife to bring the proceeds of the sale of the bird's nest that he has just sold to a

⁸ Id. at 3-4.



businessman. Later on, his wife arrived with Php 21,000.00. While he was counting the money, SO2 Viaña suddenly grabbed the money and shouted, “*Nanunuhol ka?*” allegedly because of the presence of a mediaman. In response to Viaña’s statement, accused-appellant told him that they have not agreed on anything and that he is not bribing him. This prompted Viaña to threaten his wife that they will file a case against her. He begged Viaña to spare his wife and so the latter was instructed to sign in a logbook to make it appear that she just visited him. Before his wife left the office, Viaña handed the amount of Php 16,000.00 to her while the rest of the Php21,000.00 amounting to Php 5,000.00 was handed over to accused-appellant. Viaña told him that, “*Itong Php 5,000.00 ay sadyang pinaiwan niya para sa mga kasamahan niya, panggastos[.]*” But before he was jailed, SO2 Viaña allegedly took back the Php 5,000.00 from him.⁹

Ruling of the RTC

After trial on the merits, in its Decision dated June 10, 2014 the RTC convicted Cabezudo of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, all the foregoing premises considered, the accused EDWIN CABEZUDO y RIEZA is hereby found **GUILTY** beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002. He is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT, and to pay a fine of Five Hundred Thousand Pesos (PhP500,000.00).

The 0.10 gram of methamphetamine hydrochloride or shabu is hereby confiscated in favor of the government to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The amount of PhP18,000.00 confiscated from the accused is hereby ordered released to the accused for lack of any legal basis.

SO ORDERED.¹⁰

The RTC ruled that the evidence on record were sufficient to pronounce a verdict of conviction against Cabezudo.¹¹ It held that there was testimony to the effect that the buy-bust operation was a legitimate one; hence, there was sufficient proof on record that the sale took place. Furthermore, it ruled that the defenses of denial and frame-up are commonly looked by the courts with disfavor as they could easily be concocted and are, in fact, common defenses in prosecutions for sale of dangerous drugs. The RTC added that the apprehending officers in this case enjoy the presumption of regularity in the performance of their official functions.¹²

⁹ Id. at 4-6.

¹⁰ CA *rollo*, p. 50.

¹¹ Id. at 47.

¹² Id. at 47-48

Aggrieved, Cabezudo appealed to the CA.

Ruling of the CA

In the questioned Decision dated November 16, 2016, the CA affirmed the RTC's conviction of Cabezudo, holding that the prosecution was able to prove the elements of the crimes charged. The CA declared that since the main issue of the case was the integrity and evidentiary value of the seized item, then the findings of the trial court should be given great weight and respect as it was in a better position to decide the credibility of evidence.¹³ It likewise upheld the finding of the RTC that the elements of illegal sale of dangerous drugs were sufficiently proven in the present case.¹⁴

The CA added that, contrary to Cabezudo's contention, the integrity of the *corpus delicti* was preserved because "the chain of custody [was] unbroken from the time of markings, inventory and laboratory examination up to the presentation to the court of the sachet containing *shabu*." The CA noted that "non-compliance with Section 21 [of RA 9165] does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible [and the] requirements under R.A. No. 9165 and its Implementing Rules and Regulations (IRR) are not inflexible."¹⁵

The CA was also not persuaded by Cabezudo's defense. It held that bare denials and accusations of frame-up could not prevail over the affirmative testimonies of the witnesses. The CA thus upheld the conviction of Cabezudo.

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Cabezudo of the crime charged.

The Court's Ruling

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

Cabezudo was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5 of RA 9165. To convict a person under a charge of illegal sale of dangerous drugs, the prosecution must prove the following elements: (1) the identity of the buyer and the

¹³ *Rollo*, pp. 7-8.

¹⁴ *Id.* at 8-9.

¹⁵ *Id.* at 13.



seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁶

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.¹⁷ 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,¹⁸ the law nevertheless requires strict compliance with the procedures laid down by it to ensure that rights are safeguarded.

Thus, the Court, in each case, looks into whether the police officers involved adhered to the step-by-step procedure outlined in Section 21 of RA 9165. This is because, in all drugs cases, 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.¹⁹ 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 requisite is indispensable to make a finding of guilt.²⁰

In this connection, Section 21, 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: (1) that 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 of the very nature of anti-narcotics operations, where 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 are prevalent, the possibility of abuse is great.²¹

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

¹⁷ *People v. Guzon*, 719 Phil. 441, 451 (2013).

¹⁸ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

¹⁹ *People v. Guzon*, *supra* note 17, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

²⁰ *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

²¹ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).



Section 21, 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 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.**²² **In this connection, the phrase also means that the three required witnesses should already be physically present at the time of inventory — 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.

In the present case, while all three required witnesses **signed** the inventory receipt, a thorough review of the records reveals that (a) none of them was present at the time of seizure and apprehension, and (b) only one of them was present during the actual conduct of the inventory. As SI2 Erwin Magpantay (SI2 Magpantay), the poseur-buyer, testified:

Q How many members are there in the operation?

A More or less five (5) persons.

Q Who are these five (5) persons?

A SO2 Christopher Viaña, me and the remaining are members of PACTAF Operatives.

x x x x

Q And [a]fter that Mr. Witness, isn't not that Edwin Cabezudo was trying to shout, if you recall?

A Yes, ma'am.

Q And he was shouting Mr. Witness particularly for help, or “*tulong tulong tinatamnan ako*”

A He shouted ma'am.

Q And he shouted that somewhere at the middle of the road?

A Yes, ma'am.

Q And after that you subdue (*sic*) the accused?

²² IRR of RA 9165, Art. II, Section 21(a).

- A Yes, sir. (*sic*)
- Q And that is why he was lying facing the ground?
- A Yes, ma'am.
- Q And isn't it Mr. Witness that immediately you marked the alleged object?
- A Yes, ma'am.
- Q **But when you marked them, it was only your members who were present?**
- A **Barangay Officials.**
- Q **Barangay Officials of Brgy. Palanas**
- A **Yes, at that time, ma'am.**
- Q **So at that time when you first marked the documents there were looking officials?**
- A **There was no DOJ.**
- Q **So when you were marking the object, there was no media and DOJ representative?**
- A **Marking the evidence; yes, ma'am.**
- Q And after that that (*sic*) is the only time you went to the barangay hall?
- A Yes, ma'am.
- Q And in the Barangay Hall, you continued with the documentation?
- A Yes, ma'am.
- Q When you arrived at the barangay hall, did you immediately write the Enventory (*sic*) Receipt?
- A Upon the arrival of the other witnesses.
- x x x x
- Q **And you will agree with me Mr. Witness that when the media and DOJ representatives arrived at the barangay, the object evidence was already marked?**
- A **Yes, ma'am.**²³ (Emphasis supplied)

The testimony of SO2 Cristopher Viaña (SO2 Viaña), a part of the apprehending team, further reveals that it was only the *barangay* official who was present at the time of the inventory:

²³ TSN, September 26, 2012, pp. 4-20.



Q At that time Mr. Witness, there was no barangay official either DOJ representative?

A Yes, ma'am. Media.

Q After he was subdued Mr. Witness, what did you do to whim (*sic*)?

A We waited for the barangay official

Q What do you mean, "he was there"?

A He was lying faced down.

Q What time did the barangay captain arrived (*sic*)?

A I cannot exactly remember the time but it was only for a short time after we subdued him.

Q Where did you mark the shabu, Mr. Witness?

A On the road where the incident happened.²⁴ (Emphasis supplied)

The above facts were likewise corroborated by the testimonies of Cabezudo and Reno Pisalbon (Pisalbon), the *barangay* captain who signed the inventory receipt. *Barangay* captain Pisalbon's testimony further confirms that two of the three required witnesses – the DOJ representative and the member of the media – were not present *at the time of the inventory*:

Q Do you recall of any unusual incident Mr. witness, at that time?

A Yes, ma'am.

Q Will you please tell us?

A At that time when I was eating[,] Barangay Tanod arrived and he told me that there was someone caught by a PDEA who is selling drugs.

Q Upon hearing that information[,] what did you do Mr. witness?

A We went to the barangay hall and I saw Edwin Cabezudo with handcuff.

x x x x

Q So, what else happened when they were still inside the barangay hall?

A None, ma'am. I can not recall.

Q Aside from the PDEA members were you able to see a member of the media?

A None, ma'am.

²⁴ TSN, January 30, 2013, pp. 21-22.

Q What about a member from the DOJ?

A None, ma'am.²⁵ (Emphasis supplied)

On the other hand, it may be inferred from Cabezudo's testimony that the other witnesses were already "called-in" to sign the inventory receipt, and that the inventory had already been completed at the place of apprehension – where only the *barangay* official was present:

Q When you were already in the barangay hall of Palanas, what happened next, if any?

A They let me sit in the chair and we waited for the barangay captain.

x x x x

Q What time did the barangay captain of Palanas arrive, Mr. Witness?

A At about 1:00 o'clock, ma'am.

x x x x

Q After that, Mr. Witness, what happened?

A They put me in the blotter, in the barangay.

Q After the blotter what happened next?

A After that I saw them that they were looking for a Xerox machine because they will photocopy the Five Hundred peso (Php500.00) bill.

Q Did you find photocopy machine?

A Yes, ma'am in the barangay hall.

Q Was the money photocopied, Mr. Witness.

A Yes, ma'am.

Q After the money was photocopied, what did they do next, Mr. Witness?

A They instructed the barangay secretary to put it in the blotter.

Q And then after that what happened?

A We waited for the DOJ representative.

Q For how long did you wait for that DOJ representative?

A At about 3:00 o'clock the DOJ representative arrived.

Q After the DOJ representative arrived, what did they do next?

A I saw them signing a document, ma'am.

Q What was the document that they were signing?

²⁵ TSN, March 7, 2013, pp. 3-5.



A I don't know.

Q After they signed the document, what did they do next?

A They left.²⁶ (Emphasis supplied)

It is important to point out that the members of the apprehending team in this case had more than ample time to comply with the requirements established by law. By their own version of the facts, as previously narrated, they received the information from their confidential informant at 9:30 a.m. on August 16, 2011, and they had ample discretion as to when to conduct the buy-bust operation because the confidential informant supposedly had direct contact with Cabezudo. They even had time to prepare a Pre-Operation Report²⁷ and coordinate with their Regional Office before the operation was actually conducted.²⁸ **The officers, therefore, could 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 effort to secure the attendance of two of the three required witnesses. Worse, neither the police officers nor the prosecution – during the trial – offered any explanation for their deviation from the strict requirements of the law.

It is worth emphasizing that Section 21, RA 9165 and its IRR requires the apprehending team to conduct the physical inventory of the seized items and the photographing of the same **in the presence of the required witness**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.

— The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of** the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof:** *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest

²⁶ TSN, April 23, 2013, pp. 9-12.

²⁷ Records, pp. 29-30.

²⁸ *Rollo*, p. 3.

police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] (Emphasis and underscoring supplied)

In this case, clear from the afore-quoted testimonies is the fact that while the inventory was conducted at the place of the apprehension, **it was conducted only in the presence of the barangay official.** To repeat, the representatives from the media and the DOJ were only “called-in” to sign the inventory receipt at the *barangay* hall. Parenthetically, even the place where the other witnesses were “called-in” was improper, for the rules require the inventory to be conducted at the place of the arrest or, if impracticable, **at the nearest police station.**

The insufficient compliance with Section 21, RA 9165 was likewise acknowledged by the CA, but it merely justified the same as follows:

The disquisition of the Supreme Court in the case of *People vs. Mapan Le* is instructive that non-compliance with Section 21 does not render an accused’s arrest illegal or the items seized/confiscated from him inadmissible. The requirements under R.A. No. 9165 and its Implementing Rules and Regulations (IRR) are not inflexible. What is essential is “*the preservation of the integrity and the evidentiary value of the seized items,*[”] as the same would be utilized in the determination of the guilt or innocence of the accused.²⁹

Concededly, Section 21 of the IRR of RA 9165 provides that “non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.” For this provision to be effective, however, the prosecution must (1) first recognize any lapse on the part of the police officers and (2) then be able to justify the same.³⁰

While 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, 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.³¹ The Court has

²⁹ Id. at 13.

³⁰ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

³¹ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.³²

In this case, the prosecution failed to recognize and justify the police officers' deviation from the procedure provided 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.³³ As the Court explained in *People v. Reyes*:³⁴

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 x³⁵ (Emphasis supplied)

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. The Court elucidated on the purpose of the law in mandating the presence of the required witnesses in *People v. Tomawis*³⁶ 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 vs. Mendoza*,³⁷ 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

³² *People v. Almorfe*, 631 Phil. 51, 60 (2010); *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Villanueva*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Sagaunit*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6.

³³ See *People v. Sumili*, 753 Phil. 342 (2015).

³⁴ 797 Phil. 671 (2016).

³⁵ Id. at 690.

³⁶ G.R. No. 228890, April 18, 2018.

³⁷ 736 Phil. 749 (2014).

conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”³⁸ (Emphasis and underscoring supplied)

Notably, Roberto Herald, Jr. (Herald), a witness to the whole incident, testified to the effect that he saw the police officers putting something in Cabezudo’s back-pocket:

Q Mr. Witness, do you know the accused in this case in the person of Edwin Cabezudo?

A No, ma’am.

Q Can you tell the court where were you on August 16, 2011 at about 12:30 o’clock in the afternoon?

A Yes, ma’am I was at the barangay hall.

Q Barangay hall of what barangay, Mr. Witness?

x x x x

A Brgy. Palanas, Paracale, Camarines Norte, ma’am.

Q While you were there, do you recall of any unusual incident that happened?

³⁸ *People v. Tomawis*, supra note 36, at 11-12.

A I remember the incident about Edwin Cabezudo, ma'am.

Q What is that incident about, Mr. Witness?

A What I only saw is the arrest of Edwin Cabezudo, ma'am.

Q Mr. Witness, can you describe before this Honorable Court how was Edwin Cabezudo arrested?

A His hands were held and his face was laid down on the ground.

x x x x

Q You said, Mr. Witness, that there was, what is that the Police Officers do after Edwin Cabezudo was already lying on his stomach?

A The Policeman is trying to put something on his back pocket, ma'am.

ATTY. ADMANA:

Q And who is that policeman, Mr. Witness?

A I don't know him personally but I recognized his face, ma'am.³⁹

This is precisely the purpose of the three-witness rule required by RA 9165. While the Court is not making a pronouncement that the seized item in this case was indeed merely "planted," the above contention of planting of evidence – claimed by Cabezudo himself, as supported by the testimony of an eyewitness – highlights the required witnesses' role in ensuring the preservation of the integrity of the *corpus delicti*. **Simply stated, if only the police officers in this case complied with the procedure outlined in Section 21, then the above claim of Cabezudo would have been easily rebutted and disproved, as there would be three witnesses that could have attested to the fact that the dangerous drug did come from him.**

The Court emphasizes that while it is laudable that police officers exert earnest effort in catching drug pushers, they must always be advised to do so within the bounds of the law.⁴⁰ 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 rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of *shabu* that is 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.⁴¹

³⁹ TSN, September 26, 2013, pp. 3-7.

⁴⁰ *People v. Ramos*, 791 Phil. 162, 175 (2016).

⁴¹ *People v. Mendoza*, supra note 37, at 764.

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* held in the recent case of *People v. Lim*.⁴²

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 on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.⁴³

In *People v. Umipang*,⁴⁴ 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.

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**

⁴² G.R. No. 231989, September 4, 2018.

⁴³ Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

⁴⁴ 686 Phil. 1024 (2012).

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.⁴⁵ (Emphasis and underscoring supplied)

The prosecution did not present any other witness to offer a version different from the foregoing. In a similar way, there was no explanation offered as to why none of the three required witnesses was present in the buy-bust operation conducted against Cabezudo, and why only one was present in the conduct of the inventory. Thus, 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 Cabezudo's conviction.

In this connection, it was egregious error for both the RTC and the CA to convict the accused 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.⁴⁶ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.⁴⁷ As the Court, in *People v. Catalan*,⁴⁸ 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

⁴⁵ Id. at 1052-1053.

⁴⁶ *People v. Mendoza*, supra note 37, at 769-770.

⁴⁷ *People v. Catalan*, 699 Phil. 603, 621 (2012).

⁴⁸ Id.



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.⁴⁹ (Emphasis supplied and italics in the original)

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, as previously demonstrated.

It bears emphasis that, in cases involving dangerous drugs, the prosecution therefore **always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:⁵⁰

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.**⁵¹ (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* were thus compromised. In light of this, Cabezudo must perforce be acquitted as regards the charge of violation of Section 5, RA 9165.

As a final reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the**

⁴⁹ Id.

⁵⁰ 745 Phil. 237 (2014).

⁵¹ Id. at 250-251.

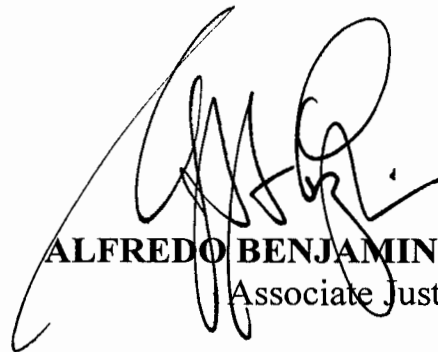


Court, the procedure outlined in Section 21 is straightforward and easy to comply with. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.⁵²

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 16, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07071 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Edwin Cabezudo y Rieza 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 Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

⁵² See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

(On wellness leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice

J. C. Reyes, Jr.
JOSE C. REYES, JR.
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
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
LUCAS P. BERSAMIN
Chief Justice

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