



COURT OF THE PHILIPPINES  
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Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
 Plaintiff-Appellee,

G.R. No. 238516

Present:

- versus -

BERSAMIN,\* C.J., Chairperson,  
 DEL CASTILLO,\*\*  
 JARDELEZA,  
 GESMUNDO, and  
 CARANDANG,\* JJ.

ROGER RODRIGUEZ y  
 MARTINEZ, alias "Roger,"  
 Accused-Appellant.

Promulgated:

FEB 27 2019

X ----- X

*[Signature]*

DECISION

GESMUNDO, J.:

This is an appeal seeking to reverse and set aside the October 27, 2017 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 07835. The CA affirmed the August 28, 2015 Decision<sup>2</sup> of the Regional Trial Court of Muntinlupa City, Branch 203 (RTC), in Criminal Case Nos. 10-669 and 10-670, finding Roger Rodriguez y Martinez alias "Roger" (appellant) guilty beyond reasonable doubt of the crime of Violation of Sections 5<sup>3</sup> and 11,<sup>4</sup> Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

\* On Official Leave.

\*\* Acting Chairperson per Special Order No. 2638 dated February 26, 2019.

<sup>1</sup> Rollo, pp. 2-25; penned by Associate Justice Elihu A. Ybañez, with Associate Justice Fernanda Lampas Peralta and Associate Justice Carmelita Salandanan Manahan, concurring.

<sup>2</sup> CA rollo, pp. 39-51; penned by Presiding Judge Myra B. Quiambao.

<sup>3</sup> Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

<sup>4</sup> Section 11. Possession of Dangerous Drugs.

*[Handwritten mark]*

### Antecedents

In two Informations, dated October 5, 2010, appellant was charged with illegal sale and illegal possession of dangerous drugs, in violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions of which state:

Criminal Case No. 10-669 (Section 11 of R.A. No. 9165)

That on or about the 4th day of October 2010, in the City of Muntinlupa, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in his possession, custody and control Methamphetamine Hydrochloride, a dangerous drug, weighing 0.20 gram and 0.220 gram, contained in two (2) heat-sealed transparent plastic sachets, in violation of the above-cited law.

CONTRARY TO LAW.<sup>5</sup>

Criminal Case No. 10-670 (Section 5 of R.A. No. 9165)

That on or about the 4th day of October 2010, in the City of Muntinlupa, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully and unlawfully sell, trade, deliver and give away to another Methamphetamine Hydrochloride, a dangerous drug, weighing 0.07 gram, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.

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

On October 19, 2010, Rodriguez was arraigned and he pleaded not guilty.<sup>7</sup> Thereafter, trial ensued.

#### *Version of the Prosecution*

The prosecution alleged that on October 3, 2010, an informant told the members of the Station Anti-Illegal Drugs-Special Operations Task Group (*SAID-SOTG*) of the Muntinlupa City Police Station that appellant was engaged in the illegal sale of drugs. Thereafter, Chief Inspector Domingo Diaz ordered that a buy-bust team be formed, with Police Officer 2 Mark Sherwin Forastero (*PO2 Forastero*) as the poseur-buyer and Police Officer 2

<sup>5</sup> Records, p. 1.

<sup>6</sup> Id. at 2.

<sup>7</sup> Id. at 22; *rollo*, p. 3.

Alfredo Andes (*PO2 Andes*) as his backup. After the briefing, the team prepared the pre-operation report and coordination form, and the buy-bust money to be used.<sup>8</sup>

On the early morning of October 4, 2010, the informant called and told the police operatives that appellant was at the Shell Gas Station in Barangay Alabang. Upon arrival at the gas station, the buy-bust team strategically positioned themselves. Shortly, appellant alighted from a tricycle and approached the team. The informant then introduced PO2 Forastero to appellant as the interested buyer of shabu for ₱500.00. After appellant signified his trust, PO2 Forastero gave him the ₱500.00 marked money. Appellant then took out of his pocket a transparent plastic sachet containing several smaller transparent plastic sachets each containing a crystalline substance. He handed one sachet to PO2 Forastero who subsequently touched his left ear to signal that the drug transaction had been consummated.<sup>9</sup>

PO2 Forastero immediately apprehended appellant and seized the transparent plastic sachet containing the small sachets and the ₱500.00 bill from appellant. PO2 Andes assisted PO2 Forastero in arresting appellant and apprised the latter of his constitutional rights. PO2 Forastero then placed the marking "RR" on the sachet subject of the sale while the two (2) remaining transparent plastic sachets were marked as "RR-1" and "RR-2"; the open plastic sachet that contained the two sachets was marked as "RR-3."<sup>10</sup>

After marking the items, the buy-bust team brought appellant to the police station because the inventory report form was in their office. PO2 Forastero retained custody of the confiscated items. Upon arrival at the police station, the Receipt/Inventory of Property Seized<sup>11</sup> was prepared and barangay officials were called to witness the inventory of the items. However, only a local government employee named Ely Diang signed as witness on the inventory receipt, with PO2 Forastero and PO2 Andes signing the same. The buy-bust team then took photographs of the appellant and the confiscated items and prepared the Spot Report and Booking and Information Sheet.<sup>12</sup>

PO2 Forastero and PO2 Andes prepared the request for laboratory examination and the specimens, and submitted them to receiving officer Police Officer 3 Mildred Kamir Kayat (*PO3 Kayat*) at the Southern Police

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<sup>8</sup> *Rollo*, pp. 6-7.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 7-8.

<sup>11</sup> *Records*, p. 15.

<sup>12</sup> *Rollo*, p. 8.

District Crime Laboratory. PO3 Kayat then turned over the seized items to Police Senior Inspector Anamelisa Bacani (*PSI Bacani*), who conducted a qualitative examination on the items. After the examination, PSI Bacani prepared Physical Science Report No. D-360-10S<sup>13</sup> stating that the item subject of the illegal sale weighing 0.070 gram, and the items subject of the illegal possession weighing 0.20 gram and 0.220 gram, all tested positive for methamphetamine hydrochloride or shabu, a dangerous drug. PSI Bacani then placed a security seal on the tested items, marked them, and turned them over to the crime laboratory's evidence custodian, Police Officer 3 Aires Abian (*PO3 Abian*). PSI Bacani later withdrew the items from PO3 Abian to present them and her findings in court during the trial.<sup>14</sup>

### *Version of the Defense*

Appellant denied the charges against him. He claimed that on October 2, 2010, while riding in a tricycle going home to Ilaya, Muntinlupa City, the tricycle driver told him that they would refuel at the Shell Station in Alabang. On the way, a white van cut their path. PO2 Forastero and two other men alighted from the van. PO2 Forastero pointed a gun at the tricycle driver, while the two men ordered appellant to alight from the tricycle. Appellant was handcuffed and his head was covered with a shirt. Thereafter, he was brought to and detained at the Criminal Investigation Division. It was only on October 4, 2010, that PO2 Forastero took his photograph and made him sign a document which content was unknown to him.<sup>15</sup>

### **The RTC Ruling**

In its decision, the RTC found appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentenced him to suffer the penalty of life imprisonment and ordered him to pay a fine of ₱500,000.00. It likewise found him guilty of violating Section 11 of the same law, and sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum; and ordered him to pay a fine of ₱300,000.00.<sup>16</sup>

The RTC held that the prosecution sufficiently established all the elements of Illegal Sale of Dangerous Drugs having proved that appellant sold one (1) plastic sachet of shabu during the buy-bust operation to PO2 Forastero for ₱500.00. The RTC also ruled that the prosecution satisfactorily

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<sup>13</sup> Records, p. 9.

<sup>14</sup> *Rollo*, pp. 8-9.

<sup>15</sup> *Id.* at 9.

<sup>16</sup> *CA rollo*, p. 51.

proved that appellant had in his possession two (2) plastic sachets of shabu. It gave weight to PO2 Forastero's testimony positively identifying appellant as the illegal seller and possessor of the confiscated drugs. The RTC declared that appellant was arrested in a valid buy-bust operation. It ruled that the police officers substantially complied with the rules on the chain of custody under Section 21 of R.A. No. 9165 despite the absence of the necessary witnesses to the inventory. Lastly, the RTC disregarded appellant's weak defense of denial for lack of merit.<sup>17</sup>

Aggrieved, appellant appealed to the CA.

### **The CA Ruling**

In its decision, the CA affirmed appellant's conviction. It, however, modified the penalty for the illegal sale by declaring that appellant was not eligible for parole. The CA ruled that the prosecution established through testimonial, documentary, and object evidence that appellant sold one (1) sachet of shabu to PO2 Forastero during a buy-bust operation. It likewise found that appellant illegally possessed two (2) sachets of drugs.

The CA did not give credence to appellant's self-serving denial of the charges against him because it presumed that the police officers had performed their duty in a regular manner. Moreover, it declared that the police officers' noncompliance with Sec. 21 of R.A. No. 9165 was not fatal despite the absence of the representatives from the media, the Department of Justice (*DOJ*), and an elected public official as witnesses during the inventory. The CA ratiocinated that despite their absence, the integrity and evidentiary value of the seized items were properly preserved by the buy-bust team.<sup>18</sup>

Hence, this appeal.

### **ISSUE**

WHETHER THE CA CORRECTLY FOUND APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIMES OF ILLEGAL SALE AND ILLEGAL POSSESSION OF PROHIBITED DRUGS UNDER R.A. NO. 9165.

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<sup>17</sup> Id. at 43-47.

<sup>18</sup> *Rollo*, pp. 14-23.

On June 4, 2018, the Court issued a Resolution<sup>19</sup> notifying the parties that they could file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. On August 13, 2018, the Office of the Solicitor General filed its manifestation in lieu of supplemental brief, adopting its arguments in its appellee's brief.<sup>20</sup> On August 3, 2018, appellant filed a manifestation in lieu of supplemental brief, stating that he would adopt his appellant's brief as his supplemental brief, in substantial compliance with the directives of the Court.<sup>21</sup>

### THE COURT'S RULING

The Court finds the appeal meritorious.

It is a general principle of law that factual findings of the trial court are not disturbed on appeal unless the court *a quo* is perceived to have overlooked, misunderstood or misinterpreted certain facts or circumstances of weight, which, if properly considered, would have materially affected the outcome of the case.<sup>22</sup> In the case at bench, the Court finds that certain facts of substance have been overlooked, which if only addressed and appreciated, would have altered the outcome of the case.

In a successful prosecution of illegal sale of dangerous drugs, the following essential elements must concur: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.<sup>23</sup> On the other hand, under Section 11, Article II of R.A. No. 9165, the elements of the offense of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.<sup>24</sup>

For both illegal sale and possession of dangerous drugs, it is essential that the prosecution establishes the identity of the seized dangerous drugs in a way that its integrity has been well preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court.<sup>25</sup> This chain of custody requirement is necessary to ensure that doubts regarding the identity of the evidence are removed through the monitoring

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<sup>19</sup> *Rollo*, pp. 32-33.

<sup>20</sup> *Id.* at 41-43.

<sup>21</sup> *Id.* at 36-38.

<sup>22</sup> *People v. Concepcion*, 691 Phil. 542, 548 (2012).

<sup>23</sup> *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

<sup>24</sup> *People v. Lagata*, 452 Phil. 846, 853 (2003).

<sup>25</sup> *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.<sup>26</sup> While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange.<sup>27</sup>

Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.<sup>28</sup> The procedure was encapsulated in Sec. 21(1) of R.A. No. 9165, which states:

(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.

The procedural requirement was further expounded in the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 under Sec. 21(a) as follows:

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

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<sup>26</sup> *People v. Garcia*, 599 Phil. 416, 434 (2009).

<sup>27</sup> *People v. Almorfe, et al.*, 631 Phil. 51, 61 (2010).

<sup>28</sup> Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

From the foregoing, the apprehending team is required to strictly comply with the procedure outlined in Section 21, Article II of the IRR of R.A. No. 9165. Their failure to do so shall not render void and invalid such seizure provided there is justifiable ground for non-compliance, and the integrity and evidentiary value of the confiscated items are properly preserved.<sup>29</sup>

In *People v. Dahil, et al.*,<sup>30</sup> the accused were acquitted because the integrity and evidentiary value of the seized drugs were compromised due to the lapses committed by the apprehending officers by not complying with the chain of custody rule. They failed to observe the proper conduct in the preservation of the *corpus delicti* from the marking of the drugs recovered until its presentation to the court. They also failed to comply with the procedural requirements set forth in Sec. 21 of R.A. No. 9165 because the physical inventory of the seized specimens was not immediately conducted after seizure and confiscation; the identity of the person who prepared the Inventory of Property Seized could not be ascertained; and the matter of how and where the seized specimens were photographed was questionable.

In the present case, a review of the records would show that the procedures laid down by R.A. No. 9165 and its IRR were not followed, thereby putting doubt as to the integrity and evidentiary value of the illicit items allegedly seized from appellant.

*The requirements of Sec. 21  
of R.A. No. 9165 were not  
complied with*

*First*, the inventory of the seized shabu was not immediately conducted after the seizure as it was only made in the police station. While it is true that Section 21(a) allows the inventory to be made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in this case, however, the arresting officer failed to provide a satisfactory explanation why the inventory was prepared at the police station. PO2 Forastero simply declared that they had to type on the inventory form at their office, thus:

PROS. ROMAQUIN, JR.:

Now how come you prepared this [i]nventory in your office and not in the place where you arrested Roger Rodriguez?

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<sup>29</sup> *People v. Goco*, 797 Phil. 433, 443 (2016).

<sup>30</sup> 750 Phil. 212 (2015).



PO2 Forastero:

Because the file is in our computer and we have to type it in our office, sir.<sup>31</sup>

This flimsy excuse is not acceptable. The apprehending team should be prepared with their inventory forms even before the buy-bust operation took place.<sup>32</sup>

*Second*, the physical inventory of the seized *shabu* and the subsequent signing of the certificate of inventory, as required, were not attended by any representative of the media and the DOJ, or any elected official.

Appellant's argument that the police officers grossly disregarded the mandates of Sec. 21 of R.A. No. 9165 and committed serious irregularity when the physical inventory was conducted without the presence of the representatives enumerated under Sec. 21, is tenable.

As stated, Sec. 21 of R.A. No. 9165 mandates the apprehending team to immediately (1) conduct a physical inventory; and (2) to photograph the seized and confiscated items **in the presence of the accused or the persons 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 records clearly show that the physical inventory of the seized illegal dangerous drugs was not witnessed by any representatives of the media and the DOJ or any elected public official who were supposed to sign the corresponding certificate of inventory. PO2 Forastero admitted on cross-examination that, indeed, there were no representatives from the media and the DOJ and no elected official was present during the seizure and the marking of the sachets of *shabu*, to wit:

Atty. Moldez:

May inventory, sino'ng gumawa ng inventory?

PO2 Forastero:

Kami po, ma'am.

Q: Sinong kami?

A: Ako po, ma'am.

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<sup>31</sup> TSN, February 22, 2013, p. 19.

<sup>32</sup> *People v. Dahil, et al.*, supra note 30, at 229.

Q: May nakapirma, LGE Ely Diang. Isa ba siyang media representative?

A: Siya po ay . . . (interrupted)

Q: Yes or no lang.

A: Hindi po.

Q: Isa ba siyang DOJ representative?

A: Hindi po, ma'am.

Q: Isa ba siyang local government elected official?

A: Hindi po, ma'am, representative po ng local government po.

Q: So hindi siya locally elected official, tama ba?

A: Yes, ma'am.<sup>33</sup>

x x x x

Atty. Moldez:

So ibig sabihin ang inventory mo na ginawa ay hindi nagco-comply sa Section 21 ng Republic Act [No.] 9165 dahil ang kailangang mag-witness doon ay local government official, DOJ representative at media, tama ba?

PO2 Forastero:

Hindi po sila available nung time na iyun, ma'am, so nagpadala lang po sila ng representative.

Q: Yes or no lang, Mr. Witness.

A: Yes, ma'am.<sup>34</sup>

On direct examination, PO2 Forastero stated that the Receipt/Inventory of the Property Seized<sup>35</sup> was signed by Ely Diang (*Diang*), an employee of the local government unit, thus:

PROS. ROMAQUIN, JR.:

Now there is also a signature here under the heading Witnesses over the name LGE Ely Diang, please go over the same and tell the Honorable Court whose signature was that?

PO2 Forastero:

It's the signature of an employee of the local government unit who's available and who is the only one who came.<sup>36</sup>

<sup>33</sup> TSN, September 26, 2014, p. 9.

<sup>34</sup> Id. at 10.

<sup>35</sup> Supra note 11.

<sup>36</sup> TSN, February 22, 2013, pp. 16-17.

The signing of the Receipt/Inventory of the Property Seized by Diang could not be deemed sufficient compliance with the requirements of Sec. 21. The enumeration under the aforestated rule is exclusive. It specifically provides that the inventory and photograph of the confiscated and/or seized items should be made in the presence of the accused, or the person 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. The presence of these personalities should not be taken lightly for the law precisely requires such insulating presence as to free the apprehension and incrimination proceedings of any taint of illegitimacy or irregularity, thus, preserve the integrity and credibility of the seizure and confiscation of evidence.<sup>37</sup> As pronounced by the Court in the case of *People v. Mendoza*:<sup>38</sup>

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21(1), *supra*, were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. 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 sachets of *shabu* that were evidenced herein of the *corpus delicti*, and, thus, 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>39</sup>

*The prosecution failed to give a justifiable ground for the noncompliance with Sec. 21 of R.A. No. 9165*

To stress, the prosecution bears the burden of proving a valid cause for noncompliance with the procedure laid down in Section 21 of R.A. No. 9165.<sup>40</sup> Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are not acceptable as justified grounds for noncompliance.<sup>41</sup> In *People v. Umipang*,<sup>42</sup> the Court held that the prosecution must show that earnest efforts were employed by the apprehending officers in contacting the representatives enumerated under the

<sup>37</sup> *People v. Mendoza*, 736 Phil. 749, 761-762 (2014).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 764.

<sup>40</sup> *People v. Sipin*, G.R. No. 224290, June 11, 2018.

<sup>41</sup> *People v. Ramos*, G.R. No. 233744, February 28, 2018.

<sup>42</sup> 686 Phil. 1024 (2012).

law; for "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."<sup>43</sup>

In the case of *People v. Lim*,<sup>44</sup> the apprehending officers therein offered the following explanations for their failure to comply with the procedures laid down in Sec. 21: (1) that no members of the media and barangay official arrived at the crime scene because it was late at night and it was raining; (2) that the inventory was made in the PDEA office as it was late in the evening and there were no available media representative and barangay official despite their effort to contact them; and (3) that there were times when they hesitate to inform the barangay officials of their operation as they might leak the confidential information. The Court, however, considered all these justifications unacceptable as there was no genuine and sufficient attempt to comply with the law.

Similarly, the lone explanation given by PO2 Forastero for the absence of the required witnesses is unacceptable. Other than PO2 Forastero's testimony that the representatives required by law were not available at the time the inventory was conducted, no other detail was offered to clarify their absence. Such flimsy excuse does not suffice as compliance with Sec. 21 of R.A. No. 9165. Not only did the apprehending officers fail to explain why the representative from the media, the DOJ and the elected public official were not available. The prosecution also failed to show that the apprehending officers exerted earnest effort to secure their presence.

In conclusion, the prosecution patently failed to comply with the requirements of Sec. 21, R.A. No. 9165, because of the improper conduct of the physical inventory. Likewise, the saving clause of the said provision could not be applied because the prosecution failed to give a justifiable reason for its noncompliance. Given the procedural lapses, serious uncertainty hangs over the identity of the seized drugs that the prosecution presented as evidence before the court. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating a reasonable doubt on the criminal liability of the accused. In view of all the foregoing, there is no recourse but to acquit appellant.

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<sup>43</sup> Id. at 1053.

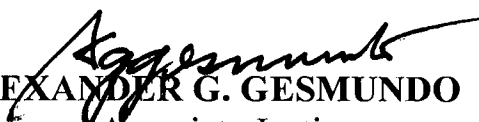
<sup>44</sup> G.R. No. 231989, September 4, 2018.

Finally, the Court reiterates the mandatory policy stated in *People v. Lim*<sup>45</sup> which needs to be enforced in order to weed out early from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, to wit:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.<sup>46</sup>

**WHEREFORE**, the appeal is **GRANTED**. The Decision, dated October 27, 2017, of the Court of Appeals in CA-G.R. CR HC No. 07835 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **ROGER RODRIGUEZ y MARTINEZ alias "ROGER"** is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless there exist other grounds for his continued detention.

**SO ORDERED.**

  
ALEXANDER G. GESMUNDO  
Associate Justice

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<sup>45</sup> Id.

<sup>46</sup> Id.

**WE CONCUR:**

(On Official Leave)  
**LUCAS P. BERSAMIN**  
Chief Justice  
Chairperson

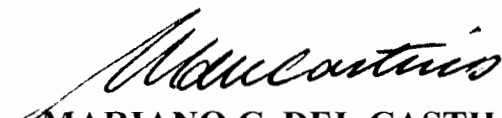
  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

(On Official Leave)  
**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.

  
**MARIANO C. DEL CASTILLO**  
Associate Justice  
Acting Chairperson, First Division

