



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 235468

Present:

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

- versus -

Promulgated:

DAN DUMANJUG y LOREÑA,*
Accused-Appellant.

01 JUL 2019

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DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by the accused-appellant Dan Dumanjug y Loreña (Dumanjug), assailing the Decision² dated September 8, 2017 (assailed Decision) of the Court of Appeals,³ Cagayan de Oro City (CA) in CA-G.R. CR-HC No. 01510-MIN, which affirmed the Omnibus Decision⁴ dated October 28, 2015 rendered by the Regional Trial Court of Butuan City, Branch 4 (RTC) in Criminal Case No. 14604 entitled *People of the Philippines v. Dan Dumanjug y Loreña*, finding Dumanjug guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as “The Comprehensive Dangerous Drugs Act of 2002,” as amended.

* Spelled as “Lorena” in some parts of the *rollo*, CA *rollo* and records.
¹ See Notice of Appeal dated September 27, 2017, *rollo*, pp. 21-23.
² *Id.* at 3-20. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring.
³ Special Twenty-First Division.
⁴ CA *rollo*, pp. 34-49. Penned by Judge Godofredo B. Abul, Jr.
⁵ 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).

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision and as culled from the records of the instant case, the facts and antecedent proceedings of the instant case are as follows:

On 22 December 2010, [Dumanjug] was charged with violation of Sections 5 and 15 of R.A. 9165 in Criminal Case Nos. 14604 and 14606. The Information⁶ charging [Dumanjug] of violation of Section 5 of R.A. 9165 reads as follows:

That at more or less 11:30 o'clock in the morning of December 7, 2010 at Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully, and feloniously sell one (1) sachet of methamphetamine hydrochloride, otherwise known as shabu weighing of (*sic*) zero point one zero three nine (0.1039) gram, a dangerous drug to a poseur[-] buyer for a consideration of five hundred (P500.00) pesos.

CONTRARY TO LAW: (Violation of Section 5 in relation to Section 26, paragraph b, of Article II of R.A. 9165).⁷

During the arraignment for both cases on 16 May 2011, [Dumanjug], then assisted by his counsel *de parte*, pleaded "not guilty" to the crimes charged.⁸

After the pre-trial, a joint trial on the merits ensued.

Version of the Prosecution

On 6 December 2010, Agent Robin Beniga Tibayan (Agent Tibayan) of the [Philippine Drug Enforcement Agency (PDEA)] Regional Office 13, Libertad, Butuan City, received an information from a walk-in Confidential Informant (informant) that [Dumanjug] was selling *shabu* in Fort Poyohon, Butuan City. Agent Tibayan immediately informed OIC Regional Director Joel Plaza, who then instructed Agent Subang to verify the information received. On 7 December 2010, after the verification turned out positive, Agent Subang, as the Team Leader, formed a team and conducted a briefing for a buy-bust operation to be conducted against [Dumanjug]. Agent Tibayan was designated as the poseur-buyer and was handed with a P500.00 bill marked with "RT" while Agent Myrian A. Balbada (Agent Balbada) was designated as the arresting officer. Agent Tibayan and the informant then proceeded to Purok 5, Fort Poyohon while Agent Balbada and the rest of the buy-bust team followed in a separate unmarked vehicle.

When Agent Tibayan and the informant reached the boarding house of [Dumanjug], the latter told them to go upstairs. Upon reaching

⁶ Records, p. 1.

⁷ Id.

⁸ Id. at 40.



the second floor, [Dumanjug] asked the informant how much he was going to buy to which the informant replied, "Only P500.00 worth, boss." [Dumanjug] then went inside his room and when he came back he handed over one (1) small sachet of *shabu*. After checking that it was a genuine *shabu*, Agent Tibayan handed the marked P500-bill to [Dumanjug]. Agent Tibayan then made a "drop" call to Agent Baldaba – the pre-arranged signal indicating that the transaction ha[d] been consummated. A few minutes thereafter, Agent Balbada and the backup team arrived at the scene. After introducing themselves as PDEA operatives and informing [Dumanjug] of his Constitutional rights and the reason for his arrest, [Dumanjug] was handcuffed. At the scene, Agent Tibayan marked the small sachet of *shabu* that was bought from [Dumanjug] as "RT-1." In [Dumanjug's] room, which was 3 to 5 meters away from the crime scene, the team saw in plain sight a weighing scale, eyeglass casing containing four (4) disposable lighters, empty sachets, aluminum foil and a Nokia cellular phone. No markings were made on the said items after Agent Subang assessed that the scene was quite dangerous.

[Dumanjug] was then taken to the PDEA Office w[h]ere he was thoroughly searched. At the same time, the pieces of evidence were photographed, marked and inventoried in the presence of [Dumanjug], the barangay kagawad of Fort Poyohon and representatives from the media and the Department of Justice. A Request for Laboratory Examination on the *shabu* specimen and a Request for Drug Test for [Dumanjug] were also prepared by Agent Tibayan which were personally submitted by him to the PNP Crime Laboratory on that same day. The result of the said examination yielded positive for *methamphetamine hydrochloride*, which is commonly known as "*shabu*."

During trial, the prosecution and the defense stipulated as to the essential testimony of P/Supt. Noemi P. Austero, the forensic chemist, to wit:

1. That on [sic] P/Supt Noemi P. Austero, is a Licensed Chemical Engineer;
2. That she is an expert witness on illegal drug examination;
3. That sometime on December 7, 2010, their office, the Regional Crime Laboratory Office 13 received a Request for Laboratory examination from Agent Robin Tibayan of the PDEA, involving one (1) heat sealed transparent plastic sachet containing suspected *shabu* with marking RT1, already marked Exhibit C for the prosecution;
4. That, thereafter, FCO Austero conducted a laboratory examination on the specimen with marking RT1, which result was reduced into writing, as evidenced by Chemistry Report No. D-157-2010, copy of which is attached in page 11 of the Record in Crim. Case No. 14604, which was already marked as Exh. D for the prosecution;



5. That on the same occasion, P/Supt Austero received from Agent Tibayan of the PDEA, a Request for Drug Test, a copy of which was already marked as Exh. E for the prosecution.⁹

When the prosecution was ordered to formally offer its evidence, the public prosecutor offered the following evidence: (1) Affidavit of Apprehension; (2) Certificate of Inventory; (3) Request for Laboratory Examination; (4) Chemistry Report No. D-157-2010; (5) Request for Drug Test; (6) Chemistry Report No. DT-186-2010; (7) Photocopy of marked money with Serial No. FL763971-P500; (8) Piece of Bondpaper with Pictures; (9) Specimen Shabu; (10) Photocopy of PDEA Blotter; (11) Pre-Operational Report; (12) Drug Paraphernalia and Nokia Cellphone; (13) Spot Report; and (14) Progress Report.¹⁰

Version of the Defense

[Dumanjug] denied the charges against him. His version of the story is as follows:

[Dumanjug] was a former salesman at Butuan Goodyear Enterprises, Inc. (BGEI), the main office of Happy Enterprises. On 7 December 2010, at around 8 o'clock in the morning, [Dumanjug] reported for work at BGEI then later proceeded to Happy Enterprises to load stocks that were supposed to be delivered to Mangagoy. After loading the stocks, [Dumanjug] instructed the driver to drop him off at his boarding house at Fort Poyohon so he [could] prepare his things and finish the report he was going to submit at BGEI before going to Mangagoy. The driver of the truck was instructed by [Dumanjug] to go home.

While [Dumanjug] was doing his report in his room situated at the second level of his boarding house, he heard a noise downstairs. When he checked it out, he saw armed men, whose faces were covered with bonnets, successfully wrecking the main door and going up the stairs towards his room. Once they reached [Dumanjug], they allegedly pointed their guns at him and instructed the latter to lie in prone position. While in that position, the masked armed men conducted a search inside the rooms in the boarding house, including [Dumanjug's] room. After the search, he was instructed to stand up and then he was handcuffed. [Dumanjug] was then interrogated as to the location of the *shabu* to which [Dumanjug] only replied that he kn[e]w nothing about any *shabu*. The men w[ere] about to bring him to the PDEA Office but since he was in his underwear, he requested them if he could put on a pair of pants. After which, the masked armed men also searched his pants for any illegal drugs but did not find any.

[Dumanjug] was brought to PDEA Office where he waited inside a room alone. When he was able to talk to a PDEA Agent, he pleaded the latter not to plant any evidence against him but when he was brought outside the room, [Dumanjug] alleged that a marked money was placed inside his pocket. [Dumanjug] did not see any civilians within the vicinity of the PDEA Office until he went outside the room that he came

⁹ TSN, March 11, 2014, p. 5; records, p. 94.

¹⁰ Records, pp. 114-115.



to know there was a barangay official, a media man and a DOJ representative.¹¹

The Ruling of the RTC

On October 28, 2015, the RTC rendered an Omnibus Decision finding Dumanjug guilty of the crimes charged against him. The decretal portion of the Omnibus Decision reads:

WHEREFORE, premises considered, in Criminal Case No. 14604 the Court finds accused Dan Dumanjug y Loreña guilty beyond reasonable doubt for violation of Section 5 of Article II of Republic Act 9165 (Comprehensive Dangerous Drugs Act of 2002) and hereby sentences him to undergo imprisonment of Life [I]mprisonment and to pay a fine of five hundred thousand (P500,000.00) pesos without subsidiary imprisonment in case of insolvency.

In Criminal Case No. 14606 for violation of Section 15, Article II of the said law, accused is hereby sentenced to undergo rehabilitation for a period of six (6) months at a government accredited rehabilitation center at the DOH Treatment and Rehabilitation Center located at Brgy. Anomar, Surigao City after service of his sentence in Criminal Case No. 14604.

The sachet of shabu is hereby ordered confiscated in favor of the government to be dealt with in accordance with law.

Accused shall be credited in the service of his sentence with his preventive imprisonment conformably with Article 29 of the Revised Penal Code, as amended.

SO ORDERED.¹²

Dumanjug moved to reconsider¹³ the aforementioned Omnibus Decision of the RTC. However, Dumanjug's Motion for Reconsideration was denied in an Order¹⁴ dated December 4, 2015. Hence, Dumanjug filed a Notice of Appeal¹⁵ on his conviction on Sale of Illegal Drugs (Criminal Case No. 14604) and sought the reversal thereof based on two issues, *i.e.*, (1) whether the testimonies of the prosecution witnesses were credible, and (2) whether the chain of custody was established.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of Dumanjug.

¹¹ *Rollo*, pp. 3-7.

¹² *CA rollo*, pp. 48-49.

¹³ *Records*, pp. 150-158.

¹⁴ *Id.* at 163.

¹⁵ *Id.* at 167-168.



According to the CA, all the essential elements of the criminal offense of illegal sale of dangerous drugs under Section 5 of RA 9156 have been sufficiently established by the prosecution. The CA held that while “gaps were observed in the strict compliance in the ‘chain of custody rule’, x x x [i]n sum, the prosecution successfully established that [Dumanjug] was caught in *flagrante delicto* of selling the sachet of *shabu*, for which reason, his conviction must be sustained.”¹⁶

Hence, the instant appeal.

Issue

For the Court’s resolution is the issue of whether the RTC and CA erred in convicting Dumanjug for violating Section 5, Article II of RA 9165.

The Court’s Ruling

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

Dumanjug was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁷

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.¹⁸ 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,¹⁹ the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for

¹⁶ *Rollo*, pp. 18-19; underscoring supplied.

¹⁷ *People v. Opiana*, 750 Phil. 140, 147 (2015).

¹⁸ *People v. Guzon*, 719 Phil. 441, 451 (2013).

¹⁹ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).



destruction.²⁰ The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.²¹

In this connection, Section 21, Article II of RA 9165²² lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; and (2) **the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

This must be so because with “the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”²³

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

The Court has previously stressed that **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; they are required to be at or near the intended place of the arrest** so that they can be

²⁰ *People v. Guzon*, supra note 18, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

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

²² The said section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

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

ready to witness the inventory and photographing of the seized and confiscated drugs immediately after seizure and confiscation. In *People v. Tomawis*,²⁴ the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*,²⁵ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and 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.”²⁶
(Emphasis and underscoring supplied)

The physical inventory and photographing of the allegedly seized drug in the presence of the three required witnesses were not done at the time of seizure and

²⁴ G.R. No. 228890, April 18, 2018.

²⁵ 736 Phil. 749 (2014).

²⁶ *People v. Tomawis*, supra note 24, at 11-12.

confiscation of the drug and at or near the place of the buy-bust.

In the instant case, it is not disputed that the inventory and photographing of evidence that was conducted in the presence of Dumanjug, the DOJ representative, *i.e.*, Ronaldo Bedrijo, the media representative, *i.e.*, Rey Brangan, and the Barangay Kagawad, *i.e.*, Celso Montilla, were not conducted immediately after the seizure and confiscation of the illegal drug at the place of the supposed buy-bust operation, *i.e.*, the boarding house of Dumanjug. Instead, the inventory and photographing of evidence in the presence of the required witnesses were commenced after the buy-bust operation was terminated and in another location – the Regional Office of the PDEA.

As noted by the CA in the assailed Decision, “[t]he inventory and the taking of photographs of the seized items were, however, not done at the crime scene. It was established by the prosecution that when they reached the PDEA Office, the team marked the other confiscated items, made inventory of all the marked items, including the marked sachet of *shabu*, and took photographs for the necessary documentation of the process.”²⁷ The CA also noted that there was a “failure of the apprehending team to immediately conduct a physical inventory and photograph of the seized items”²⁸ and that “gaps were observed in the strict compliance in the ‘chain of custody rule’[.]”²⁹ As factually found by the RTC in its Omnibus Decision based on the testimonies of Agents Tibayan and Balbada, not a single photograph was taken during the alleged buy-bust operation.

In fact, on cross-examination, Agent Tibayan readily acknowledged that the buy-bust team even failed to bring a camera when they conducted the supposed buy-bust operation:

Q Did you bring along a camera because you will be conducting a buy-bust operation?

A I think we were not able to bring a camera with us, sir.

Q You did not discuss to bring a camera during the briefing?

A We have agreed, sir.

Q But, no picture was taken at the crime scene?

A Yes, sir.³⁰

²⁷ *Rollo*, p. 17; underscoring supplied.

²⁸ *Id.*; underscoring supplied.

²⁹ *Id.* at 18; underscoring supplied.

³⁰ TSN, September 25, 2013, pp. 43-44.

Bearing in mind the foregoing incontrovertible facts, the fairly recent case of *People v. Musor*³¹ becomes instructive. The said case essentially involves a similar set of facts, wherein the police conducted the marking and inventory in the police station and not immediately in the place of the buy-bust because the place of the buy-bust was allegedly dangerous as the venue “was dark and there were persons drinking in the area.”

In the aforesaid case, the Court found the police’s explanation “hollow and not worthy of belief,”³² explaining 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 *only* when holding the same is not practicable in the place of the buy-bust. This means that **the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation.** As explained by the Court:

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 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation — 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.

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

The aforementioned case however clarified that the failure of the apprehending team to strictly comply with the procedure laid out in Section

³¹ G.R. No. 231843, November 7, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64866>>.

³² Id.

³³ Id.



21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void. However, 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.³⁴

Therefore, the critical question now redounds to whether there were justifiable grounds excusing the buy-bust team's failure to observe the mandatory requirements set under Section 21 of RA 9165. The CA believed that "the failure of the apprehending team to immediately conduct a physical inventory and photograph of the seized items was sufficiently justified during trial."³⁵

The Court disagrees.

After an exhaustive review of the records of the instant case, the Court finds that there is ***no justifiable ground*** in the instant case that warrants the non-observance of the mandatory requirements set by Section 21 of RA 9165.

First, the testimonies of the prosecution's witnesses, *i.e.*, Agents Tibayan and Balbada, offer conflicting reasons as to how the buy-bust team arrived at the decision to conduct the inventory and photographing of the evidence in the PDEA Regional Office and not at the crime scene.

When asked during direct examination as to why the inventory, photographing, and marking of the evidence were not done during the buy-bust operation, Agent Tibayan merely explained that "based on the assessment of our team leader the place is quite dangerous."³⁶ When pressed further on cross-examination, Agent Tibayan reiterated that the only reason why the inventory, photographing, and marking of the evidence was not done during the buy-bust operation was due to the assessment of the team leader, *i.e.*, Agent Subang, that the venue was "quite dangerous."³⁷

In sharp contrast, on direct examination, Agent Balbada explained that the reason why the buy-bust team decided to undertake the inventory, photographing, and marking of the evidence elsewhere was due to the supposed "gathering crowd of onlookers and kibitzers" in the area.³⁸ When asked as to how many persons converged at the place where the alleged buy-bust operation took place, Agent Balbada answered "[m]ore or less, two hundred (200), sir."³⁹

³⁴ Id.

³⁵ *Rollo*, p. 17.

³⁶ TSN, September 25, 2013, p. 15.

³⁷ Id. at 43.

³⁸ TSN, March 5, 2014, p. 6.

³⁹ Id.

Striking is the fact that Agent Tibayan made no mention whatsoever as to the supposed convergence of hundreds of persons in the vicinity of the crime scene. If indeed there is a shred of truth in Agent Balbada's testimony on the presence of hundreds of persons in the crime scene, being present all throughout the buy-bust operation, Agent Tibayan would have raised the same when he was pressed, both on direct and cross-examination, on the issue of why Section 21 of RA 9165 was not complied with. However, Agent Tibayan merely invoked the assessment of the team leader as the sole reason why the buy-bust team deviated from the mandatory requirements of Section 21 of RA 9165. This seriously erodes the veracity of Agent Balbada's assertion that the inventory and photographing at the crime scene was made dangerous due to the presence of roughly two hundred (200) persons.

Further, on cross-examination, Agent Tibayan's description of the presence of people found on the crime scene *directly contradicts* Agent Balbada's version of events:

Q How about in front of the boarding house, were there people loitering outside?

A No, sir.⁴⁰

Furthermore, on redirect examination, when again questioned as to why there were no photographs taken during the buy-bust operation, Agent Balbada seemed to have changed her answer and testified that "[n]o picture was taken because I forgot to take pictures, sir, because I was the designated arresting officer as well as the photographer at that time. So, I was with the suspect that's why it's hard for me to do two things at the same time."⁴¹ These glaring inconsistencies do not escape the Court's attention.

Second, from the testimony of Agent Balbada herself, it becomes apparent that the supposed convergence of roughly two hundred (200) persons in the vicinity of the crime scene, aside from being uncorroborated, is in itself an incredible and implausible tale.

When asked on cross-examination to describe the area of the alleged buy-bust operation, Agent Balbada answered the following:

Q So, the alleged boarding house of Dan Dumanjug is how many meters away from Montilla Boulevard?

A More or less, twenty (20) meters, sir.

Q The place is not a residential area, am I correct?

⁴⁰ TSN, September 25, 2013, p. 36; underscoring supplied.

⁴¹ TSN, March 5, 2014, p. 17.

A There were only I think five (5) or four (4) houses, sir.

x x x x

Q So, if you will be going to that boarding house, you will only (*sic*) access one alley?

A One alley, sir.⁴²

Hence, bearing in mind that the area is not a big residential area, only containing four to five houses, and that the boarding house is accessible only through one alley, it is not hard to see that the uncorroborated allegation that more or less two hundred (200) people converged at the crime scene is dubious and unbelievable, to say the least. In fact, the testimonies of Agents Tibayan and Balbada reveal that after the buy-bust operation, the buy-bust team was able to easily leave the vicinity of the crime scene. If indeed a multitude of onlookers and loiterers numbering two hundred (200) persons converged at the venue of the buy-bust, considering that there was only one alley in the area, the buy-bust team would have experienced some difficulty in leaving the area, which was not the case.

Third, even if Agent Balbada's incredible testimony on the convergence of two hundred (200) persons in the vicinity of the crime scene was to be believed, there is still no justifiable reason to conclude that it was "quite dangerous" to hold the inventory and photographing of the evidence in the presence of the required witnesses at the place of the alleged buy-bust operation.

To stress, the buy-bust operation was not conducted outdoors; it was conducted in an enclosed area, *i.e.*, the second floor of Dumanjug's boarding house. Hence, the conducting of inventory and photographing of evidence would have been left completely unaffected and unhampered by the presence of loiterers located outside the boarding house. Further, it was not alleged whatsoever that these supposed loiterers showed any intention to enter the boarding house and interfere with the buy-bust operation. Nor are there any allegations that these persons were armed and posed any significant threat to the conduct of the buy-bust operation. In sharp contrast, the members of the buy-bust team were fully armed and had engaged in extensive planning coming into the buy-bust operation.

In fact, it must be stressed that during the buy-bust operation, the buy-bust team was able to spend some time inspecting the room located on the second floor of the boarding house, closely examine the drug specimen recovered, and undertake the marking of the sachet. This obviously shows that there was no serious danger posed whatsoever to the buy-bust team and

⁴² Id. at 13.

that the inventory and photographing of the evidence could have also been conducted immediately after the confiscation of the drugs at the crime scene.

Considering the foregoing, the Court concludes that the prosecution's theory on the infeasibility of conducting the inventory and photographing of the evidence in the presence of the required witnesses immediately after the confiscation of the illegal drug at the place of the buy-bust operation due to the area being "quite dangerous" on account of the convergence of roughly two hundred (200) persons in the vicinity is a farfetched and implausible piece of fiction that deserves no consideration whatsoever.

Even assuming *arguendo* that the area of the buy-bust operation was indeed dangerous, necessitating the conduct of the inventory and photographing in another location, to reiterate, the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.

In the instant case, it is not disputed that the inventory and photographing of the evidence was conducted in the PDEA Regional Office.

On cross-examination, Agent Balbada unequivocally admitted that **the PDEA Regional Office is not the nearest police station:**

Q So, after neutralizing Dan Dumanjug, immediately you brought him to the PDEA Regional Office and not to the nearest police station which is the Langihan Police Station and Ong Yiu Police Sub-station?

A Yes, sir.⁴³

Hence, the inventory and photographing of evidence in the presence of the required witnesses at the PDEA Regional Office was not conducted in accordance with law.

Aside from the foregoing, the Court makes the following disturbing observation.

If the prosecution's theory is to be believed, there was no prior assessment before the conduct of the buy-bust operation that the area of the buy-bust was dangerous; the assessment of the team leader on the supposed danger posed by the alleged convergence of two hundred (200) persons in the crime scene was supposedly made right there and then during the conduct of the buy-bust operation. Therefore, with no prior expectation of danger in the area, the buy-bust team should have been ready, willing, and able to conduct the search, inventory, and photographing of the evidence

⁴³ Id. at 15.



with the required witnesses in the place of the buy-bust operation in accordance with Section 5 of RA 9156. However, bothersome is the fact that, aside from the buy-bust team failing to bring any camera during the buy-bust operation, the prosecution's witnesses readily admit that the three witnesses were called only after the buy-bust operation was already concluded:

Q When you reached the PDEA Regional Office, there were yet no third-party witnesses at that time, am I correct? I'm referring to Barangay Kagawad Celso Montilla, Mr. Ronaldo Bedrijo and Mr. Rey Brangan, they were not yet there when you arrived at that time?

A Yes, sir.

Q So, after you arrived at the PDEA Regional Office, that was the time that you informed all these three (3) persons?

A Yes, sir.⁴⁴

In other words, regardless of the level of danger extant in the venue of the buy-bust operation, from the get-go, **the PDEA agents really had no intention whatsoever to conduct the buy-bust in accordance with Section 21 of RA 9165.**

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* have thus been seriously compromised. In light of this, Dumanjug must perforce be acquitted.

As a final note, the Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. Our Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.⁴⁵

Nevertheless, by sacrificing the sacred and indelible right to presumption of innocence for the sheer sake of convenience and expediency, the very maintenance of peace and order sought after is rendered wholly nugatory. By thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. In other words, by disregarding the Constitution, the war on illegal drugs becomes a self-defeating and self-destructive enterprise.

⁴⁴ Id. at 16.

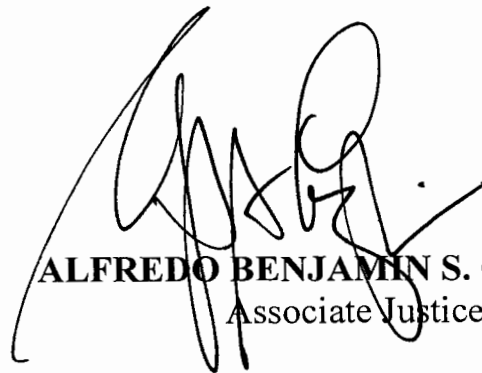
⁴⁵ CONSTITUTION, Art. II, Sec. 5.

Thus, the Court heavily enjoins the law enforcement agencies, the prosecutorial service, as well as the lower and appellate courts, to strictly and uncompromisingly observe and consider the mandatory requirements of the law on the prosecution of dangerous drugs cases. Otherwise, the malevolent mantle of the rule of men shall dislodge the rule of law. This cannot be allowed. Not while this Court sits.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 8, 2017 of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR-HC No. 01510-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Dan Dumanjug y Loreña 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 Davao Prison and Penal Farm, Dujali, Davao del Norte 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



ESTELA M. PERLAS-BERNABE
Associate Justice

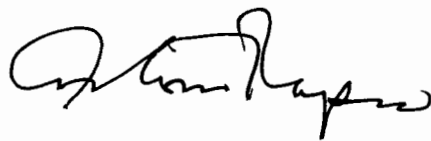


JOSE C. REYES, JR.
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

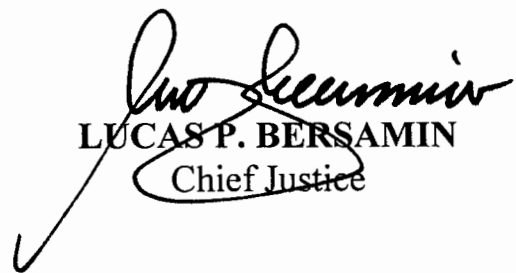
ATTESTATION

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


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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


LUCAS P. BERSAMIN
Chief Justice

