



SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
AUG 08 2019
BY: YSA
TIME: 8:51

Republic of the Philippines
Supreme Court
Manila
SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 215344

Present:

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

- versus -

EVANGELINE GARCIA y SUING,
Accused-Appellant.

Promulgated:

10 JUN 2019

X-----x

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by the accused-appellant Evangeline Garcia y Suing (Garcia), assailing the Decision² dated May 30, 2014 (assailed Decision) of the Court of Appeals³ (CA) in CA-G.R. CR-H.C. No. 05950, which affirmed the Decision⁴ dated November 26, 2012 rendered by the Regional Trial Court of San Fernando City, La Union, Branch 29 (RTC) in Criminal Case No. 8258 entitled *People of the Philippines v. Evangeline Garcia y Suing*, finding Garcia 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.

The Facts and Antecedent Proceedings

On January 26, 2009, an Information⁶ was filed against Garcia, the

* On leave.
1 See Notice of Appeal dated June 23, 2014, *rollo*, pp. 19-21.
2 Id. at 2-18. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring.
3 Eleventh Division.
4 CA *rollo*, pp. 44-50. Penned by Presiding Judge Asuncion F. Mandia.
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).
6 Records, p. 1.

accusatory portion of which reads as follows:

That on or about the 8th day of January 2009 in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, **for and in consideration of the sum of P500.00** did then and there wilfully, unlawfully and feloniously, sell and deliver **one (1) plastic sachet containing ZERO POINT ZERO ONE HUNDRED FORTY NINE (0.0149) gram of Methamphetamine hydrochloride**, a dangerous drug, to **IO1 LANIBELLE C. ANCHETA** who posed as [a] buyer thereof using marked money, **ONE (1) piece of FIVE HUNDRED [P]eso bill bearing a [S]erial No. XW759507** without the necessary authority or permit from the proper government authorities.

CONTRARY TO LAW.⁷ (Emphasis supplied)

Upon arraignment on February 17, 2009, Garcia pleaded not guilty to the charge.⁸ On May 11, 2009, the prosecution filed a Motion for Leave of Court to Amend the Information and Admit Amended Information,⁹ alleging that there was a typographical error in the Information, with the alleged incident occurring on January 9, 2009 and not January 8, 2009. On May 21, 2009, the RTC issued an Order¹⁰ granting the aforesaid Motion, allowing the amendment of the Information to adjust the date of the commission of the crime from January 8, 2009 to January 9, 2009. Thereafter, the pre-trial and trial ensued. The prosecution's version, as summarized by the CA, is as follows:

The evidence for the prosecution as culled from the testimonies of IO1 Lanibelle Ancheta (IO1 Ancheta) and IO2 Jojo Gayuma (IO2 Gayuma)[,] both members of the PDEA, formerly assigned at the PDEA Regional Office 1, Camp Diego Silang, Carlatan, San Fernando, La Union, is as follows: On January 8, 2009[,], at about 8:00 P.M., a confidential informant (CI) went to their Office and reported to IO1 Ricky Ramos [(IO1 Ramos)], the duty officer, about the illegal drug activity of one [Garcia] in Ilocanos Norte, San Fernando City, La Union. The CI further told them that [Garcia] sells drugs only during midnight and that he could accompany their agents to the house of [Garcia]. Their Regional Director[,], Roberto S. Opena[,], was informed about the presence of the CI and upon verification from the Intelligence Section that [Garcia] is listed in their Order of Battle, organized a team to conduct a buy-bust operation with IO1 Ancheta as the *poseur* buyer, IO[2] Gayuma as her back-up, and five (5) other members as perimeter back-up. IO1 Ancheta prepared the buy-bust money consisting of a P500 bill marked it with her initials 'LCA' which stands for Lanibelle C. Ancheta (Exhibits 'C' and 'C-1'), photocopied it and recorded it in their logbook.

⁷ Id.

⁸ CA rollo, p. 44.

⁹ Records, pp. 63-64.

¹⁰ Id. at 67. Penned by Presiding Judge Robert T. Cawed.

At about 12:45 A.M. of January 9, 2009, the team, together with the CI[,] proceeded to Ilocanos Norte on board their service vehicle. Upon reaching the place, they parked their vehicle along Lete Street and Bonifacio Street, which is about 40 meters away from the house of [Garcia]. IO1 Ancheta and IO[2] Gayuma[,] together with the CI[,] alighted from the vehicle and proceeded to the house of [Garcia]. They saw [Garcia] standing outside her house so they approached her and the CI introduced IO1 Ancheta to her[,] saying in Ilocano: 'Manang Vangie, addatoy dan, gumatang da ti *shabu*,['] meaning – 'Manang Vangie[,] here they are, the interested buyers of *shabu*.['] [Garcia] asked IO1 Ancheta how much she would buy, to which she answered 'P500 worth of *shabu*.['] [Garcia] asked for the money and after IO1 Ancheta handed her the P500 buy bust money, [Garcia] in turn gave IO1 Ancheta one transparent plastic sachet containing *shabu*. Immediately thereafter, they arrested [Garcia] and apprised her of her constitutional rights. IO1 Ancheta searched [Garcia] and recovered from her the P500 bill. IO1 Ancheta marked the plastic sachet (Exhibit 'B') with the marking A-1LCA (Exhibit 'B-1') and likewise prepared the Certificate of Inventory (Exhibit 'E') outside the house of [Garcia], in the presence of Rico Valdez [(Valdez)] of DZNL and Danilo Nisperos [(Nisperos)], a Barangay Kagawad of Sevilla, San Fernando City who affixed their signatures on the document (Exhibits 'E-2' and 'E-3'). They took photographs of the evidence (Exhibits 'F' and 'F-1') then proceeded to their office at Camp Diego Silang, Carlatan, San Fernando City, La Union[,] where IO1 Ancheta prepared the Booking Sheet and Arrest Report (Exhibit 'D') and a Request for Laboratory Examination (Exhibit 'G') which was signed by Atty. Marvin Tabares, he being the higher ranking officer in their office. After preparing their Affidavit of Arrest (Exhibit 'H'), they brought the confiscated items to the PNP Crime Laboratory where the items were received by the duty officer PO1 Nilo as shown by his signature on the request (Exhibit 'G-1'). The result of the laboratory examination given to them by the said office was that the specimen yielded positive result for the presence of methamphetamine hydrochloride. x x x¹¹

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

The evidence for the accused anchors mainly on the testimonies of [Garcia] herself and Gil Garado, a nephew of [Garcia's] husband.

[Garcia] identified the Counter-Affidavit with Motion to Dismiss she executed in relation to this case (Exhibit '1'). She denied the allegations of the prosecution witness that a buy bust operation was conducted in their house on January 9, 2009. Her version of the incident is as follows: She lives in the house of her in-laws at [N]o. 327 Ilocanos Norte[,] San Fernando City, La Union[,] which is a 2-storey house with 4 rooms downstairs and 5 rooms upstairs. Among the occupants of the house are Catherine Garcia, Freddie Garcia and the other siblings of her husband. On January 9, 2009 at 1:00 P.M., she was sleeping inside one of the rooms downstairs when 5 armed male members of the PDEA

¹¹ *Rollo*, pp. 4-5.

barged into their room and searched their *dura* box and other belongings. There was no female person in the group. They asked them what they were searching for but they did not answer. Her 3 [c]hildren were with her at that time but they were locked up by the PDEA agents in one of the rooms. The other occupants of the house went out of their rooms but whenever they peep[ed], they were threatened by the PDEA agents with their guns. The search lasted for five minutes but the searchers did not find anything. After the search, she was dragged outside the house and was boarded into a van[,] then brought to Camp Diego Silang. There is no truth to the claim that she was selling *shabu* after midnight because in their barangay, strangers are not allowed to enter beyond 8:00 P.M. and the place is totally secured.

X X X X

Gil Garado testified that [Garcia] is his aunt because his mother and the husband of [Garcia] are siblings. He and his family live on the second floor of the house where [Garcia] also lives. On January 9, 2009, at 1 o'clock A.M., he and his sisters Charlene Garado and Christine Joy Oyando were inside their room when he heard a noise coming from the first floor and when he peeped, he saw [Garcia] being dragged from her room to the door of the house by two male PDEA agents. They were about 5 to 7 male persons then who were wearing shirts with the markings PDEA on the front. [Garcia] was shouting [and] asking for help but they were afraid to get near them because they were armed. He immediately went up because he was afraid to get involved. He identified the Joint Affidavit which he and his sister Charlene May Garado executed (Exhibit '2').¹²

The Ruling of the RTC

After trial on the merits, in its Decision dated November 26, 2012, the RTC convicted Garcia of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, finding the accused Evangeline Garcia y Suing GUILTY beyond reasonable doubt of the crime charged, she is hereby sentenced to life imprisonment and to pay a fine of five hundred thousand pesos (PHP500,000.00) without subsidiary imprisonment in case of insolvency. The period of detention of the accused should be given full credit.

X X X X

SO ORDERED.¹³

¹² Id. at 5-6.

¹³ *CA rollo*, p. 50



According to the RTC, “[a]fter carefully assessing the testimonies of the witnesses for the prosecution and the defense, the court finds the testimonies of the prosecution witnesses credible. IO1 Ancheta and IO2 Gayuma testified convincingly that there was indeed a buy bust operation conducted by them on January 9, 2009 outside the residence of [Garcia] in Ilocanos Norte, San Fernando City, La Union. On the other hand[,] the accused failed to present any convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. The allegation of the accused that IO1 Ancheta was not present at the time of her arrest and instead pointed to one PO3 Abang and one Major De Vera as her arresting officers cannot be given credence in the absence of any showing on the part of IO1 Ancheta and IO2 Gayuma of any ill motive in falsely testifying against her or x x x against PO3 Abang and Major De Vera for arresting her without any case at all. These are serious accusations which could not have been ignored if indeed true.”¹⁴

Aggrieved, Garcia filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC’s conviction of Garcia.

The CA held that the RTC “did not err in finding that the prosecution amply proved all the elements of the sale of the subject drugs. As borne by the records, all the above-mentioned elements were clearly, positively and unequivocally testified upon by the PDEA agent who acted as a *poseur*-buyer, [IO1 Ancheta], and her back-up, [IO2 Gayuma.]”¹⁵

The CA stressed on the presumption of regularity on the part of the Philippine Drug Enforcement Agency (PDEA) agents who conducted the supposed buy-bust operation, holding that “credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary in suggesting ill-motive on the part of the police officers or deviation from the regular performance of their duties. In this case, there was no evidence showing that the prosecution witnesses[,] IO1 Ancheta and IO[2]’Gayuma[,] were impelled by improper motive in testifying against [Garcia] or that they deviated from the regular performance of their duties.”¹⁶

Hence, the instant appeal.

¹⁴ Id. at 48.

¹⁵ *Rollo*, p. 11.

¹⁶ Id. at 15.



Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting Garcia for violating Section 5, Article II of RA 9165.

The Court's Ruling

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

Garcia 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 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

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).

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).



In this connection, Section 21, Article II of RA 9165,²² the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation;** 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 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.²⁴ In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be**

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).

²⁴ IRR of RA 9165, Art. II, Sec. 21(a).

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.

Upon careful review of the records of the instant case, **there is serious doubt that the physical inventory of the seized illegal drugs and the photographing of the same were conducted immediately after seizure and confiscation at the place of the apprehension** as required under Section 21 of RA 9165.

According to the Joint Affidavit of Arrest²⁵ dated January 9, 2009 executed by IO1 Ancheta and IO2 Gayuma, “that inventory and photograph of the items confiscated from the subject was made at the place of arrest.”²⁶

On cross examination, IO1 Ancheta confirmed that the place of arrest was **outside the house of Garcia** and that the inventory immediately took place thereat:

Q You mentioned that after her arrest she was taken at your office, is that correct?

A After the inventory at the place of arrest[,] ma’am.

Q At the place of arrest which is outside the house of Evangeline Garcia?

A Yes[,] ma’am.

Q In front of their front door[,] that was the place of inventory?

A In front of their house[,] ma’am.

Q You did not enter their house, is that correct[,] madam witness?

A No[,] ma’am.²⁷

IO1 Ancheta further clarified that the inventory, which was supposedly done outside the house of Garcia, was specifically conducted **in the yard of the said house** and that **the items confiscated were placed on the cemented floor outside Garcia’s house during the inventory:**

Q Where did you put the items? You were just holding it, the items[,] while you were conducting the inventory[?] [Y]ou did not place them on top of a table or something?

²⁵ Records, pp. 12-13.

²⁶ Id. at 13.

²⁷ TSN, December 13, 2010, p. 5.

A I put it on the floor[,] ma'am.

Q The floor outside the house[,] madam witness?

A Yes[,] ma'am.

Q That is a cemented floor?

A Yes[,] ma'am.

x x x x

Q You were just on the vicinity, on the yard of the house of Evangeline Garcia?

A Yes[,] ma'am.²⁸

In relation to the foregoing testimony, the prosecution offered into evidence a mere black and white printed copy of a photograph, marked as the prosecution's Exhibit "F."²⁹ **According to the prosecution, the said photograph allegedly depicts the exact moment when the inventory was supposedly being conducted at the place of arrest.**

***However*, upon simple perusal of the said photograph, it appears that the supposed taking of inventory was not conducted outside the house of Garcia, as alleged by the prosecution. The photograph depicts three persons situated inside a room enclosed by a wall. The photograph also shows that the two women depicted therein were sitting on a furniture situated in this room. The photograph does not show that the seized items were placed on the cemented floor, as testified by IO1 Ancheta. Instead, the photograph shows a small table or cabinet being utilized by the PDEA agents.**

Simply stated, the photograph submitted by the prosecution does not show that the alleged inventory was conducted at the yard outside the house of Garcia, the alleged place of arrest.

In fact, the counsel of the accused, Atty. Loida Martinez, raised the matter during the cross examination of IO1 Ancheta, asking the latter why there appears to be a furniture shown in the photograph when it was alleged by the prosecution that the inventory was conducted on the cemented floor of the yard located outside the house of Garcia. The Court then allowed the prosecution to present and identify the originals of the photographs of the alleged inventory so that the prosecution could fully explain how the photograph offered in evidence substantiated the claim that an inventory was

²⁸ Id. at 6-7.

²⁹ Records, p. 36.



conducted immediately after the arrest at the place of such arrest. The prosecution had every opportunity to explain the circumstances surrounding the photograph and present other photographs of the inventory. Curiously, however, the prosecution could not produce any other copy of the subject photograph. Nor was the prosecution able to provide any other photograph depicting the inventory of the supposed plastic sachet of *shabu* retrieved during the buy-bust operation.³⁰ It is highly suspicious and doubtful, to say the least, that the prosecution was not able to produce nor present any other photograph depicting the alleged inventory. On the other hand, the sole photograph offered into evidence by the prosecution, marked as Exhibit "F," shows that the supposed inventory was not conducted at the place of Garcia's arrest.

In fact, the Court notices a glaring inconsistency in the testimony of IO1 Ancheta. On direct examination, IO1 Ancheta testified that she was the one who took the photograph of the inventory which was presented into evidence:

Q You took photographs[,] Madam Witness?

A Yes.³¹

However, on cross examination, when asked as to who was in charge of taking photographs of the inventory, IO1 Ancheta offered a different answer:

Q Madam witness[,] there was a picture which you identified a while ago showing you, the accused and another person named Jojo. Now, will you please tell this Honorable Court who was in charged in the taking of pictures during that time?

A One of our team members[,] sir.

Q Could you still recall the name of that member of your team[,] madam witness?

A I can no longer recall his name[,] sir.³²

Therefore, based on the evidence on record, the Court seriously doubts that the physical inventory of the seized illegal drugs and the photographing of the same were conducted immediately after seizure and confiscation at the place of the apprehension, as mandated by Section 21 of RA 9165.

³⁰ TSN, March 14, 2011, p. 6.

³¹ TSN, November 22, 2010, p. 6.

³² TSN, March 14, 2011, pp. 11-12.



Even assuming that convincing evidence was produced by the prosecution substantiating the claim that an inventory was conducted immediately after the apprehension of Garcia at the place of arrest, the prosecution's main witness, IO1 Ancheta, testified that **none of the witnesses required under Section 21 of RA 9165 was present at the time of the seizure and apprehension** and that only Garcia; Valdez, a media representative; and Nisperos, a Brgy. Kagawad of Brgy. Sevilla were present during the conduct of the inventory. There was **no representative from the DOJ**. Further, **the elected public official and representative from the media appeared and participated only after the transaction occurred**. As admitted by IO1 Ancheta under oath in open court:

Q Who were present Madam Witness when you prepared that Certificate of Inventory?

A The subject Evangeline Garcia, media representative and elected Barangay Official.

Q Do you mean to say that the media representative w[as] present while you were transacting with Evangeline Garcia?

A No maam[,] after the transaction.

Q What about this Barangay Official[,] Madam Witness[,] was he also present or was he present while you are having transaction with Evangeline Garcia?

A No maam.³³

None of the prosecution witnesses offered any explanation as to why a representative from the DOJ was not present in the buy-bust operation conducted against Garcia. The prosecution did not also address the issue in their pleadings, and the RTC and the CA instead had to rely only on the presumption that the police officers performed their functions in the regular manner to support Garcia's conviction.

Further, there is serious doubt that the inventory was conducted in the presence of Garcia and/or her representative or counsel.

To reiterate, under the Section 21 of RA 9165, 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 DOJ, **all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

³³ TSN, November 22, 2010, p. 5.

In the Certificate of Inventory,³⁴ offered into evidence by the prosecution as Exhibit “E,” it is not disputed that **only Valdez and Nisperos signed the same. It must be stressed that the inventory was not signed by Garcia nor her counsel as required by Section 21 of RA 9165.**

The Court has stressed that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,³⁵ 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*,³⁶ 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.”³⁷

³⁴ Records, p. 34.

³⁵ G.R. No. 228890, April 18, 2018.

³⁶ 736 Phil. 749 (2014).

³⁷ *People v. Tomawis*, supra note 35, at 11-12.

It is important to point out that the apprehending team in this case had more than ample time to comply with the requirements established by law. As IO1 Ancheta herself testified, Garcia had already been previously placed in the PDEA's so-called "[O]rder of [B]attle."³⁸ Hence, the PDEA had already known for some time that Garcia was suspected of selling illegal drugs.

Further, on January 8, 2009, the civilian informer made the report on Garcia's alleged selling of *shabu* at PDEA's Regional Office 1, Camp Diego Silang, Carlatan, San Fernando City, La Union on or about 8:00 P.M. The team proceeded to execute the buy-bust operation at about 12:45 A.M. of January 9, 2009. Meaning, the team had almost five (5) hours to contact and assemble all the required witnesses. **Thus, they could have complied with the requirements of the law had they intended to — that is, assuming there really was a buy bust.** However, the apprehending officers in this case did not exert even the slightest of efforts to secure the complete attendance of the required witnesses. In fact, the required witnesses present — the elected official and the media representative — were only called in after Garcia had already been apprehended. Worse, the prosecution — during the trial — failed to show or offer any explanation for police officers' deviation from the law.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.³⁹ The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.⁴⁰ As the Court held in *People v. De Guzman*,⁴¹ "[t]he justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist."⁴²

Moreover, courts cannot rule that the presence of the media representative and the public official constitutes substantial compliance with the requirements of RA 9165. To emphasize, Section 21 of RA 9165 is unequivocal in its requirement: that the inventory must be done "**in the**

³⁸ TSN, November 22, 2010, p. 14.

³⁹ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

⁴⁰ *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. Sagauinit*, 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.

⁴¹ 630 Phil. 637 (2010).

⁴² *Id.* at 649.

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.⁴³ The law is plain and clear. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.⁴⁴

In the case at hand, as already explained, not only was the representative of the DOJ absent; Garcia or her representative/counsel did not sign copies of the inventory. Further, the photograph supposedly capturing the inventory does not show that the inventory was conducted immediately after arrest at the place of the apprehension.

It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,⁴⁵

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.**⁴⁶ (Emphasis in the original and underscoring supplied)

In this connection, it was an error for both the RTC and the CA to convict Garcia 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**

⁴³ Emphasis and underscoring supplied.

⁴⁴ *Relox v. People*, G.R. No. 195694, June 11, 2014, p. 4 (Unsigned Resolution).

⁴⁵ G.R. No. 231989, September 4, 2018.

⁴⁶ *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

overcome the stronger presumption of innocence in favor of the accused.⁴⁷ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.⁴⁸ As the Court, in *People v. Catalan*,⁴⁹ reminded the lower courts:

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.⁵⁰ (Emphasis supplied)

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

What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the conduct of buy-bust operations requires the following:⁵¹

⁴⁷ *People v. Mendoza*, supra note 36, at 769 (2014).

⁴⁸ *People v. Catalan*, 699 Phil. 603, 621 (2012).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

CHAPTER V

x x x x

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

V. SPECIFIC RULES

x x x x

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

1. Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:

- a. Record time of jump-off in unit's logbook;
- b. Alertness and security shall at all times be observed[;]
- c. Actual and timely coordination with the nearest PNP territorial units must be made;
- d. Area security and dragnet or pursuit operation must be provided[;]
- e. Use of necessary and reasonable force only in case of suspect's resistance[;]
- f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
- g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
- h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arm[']s reach;
- i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
- j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
- k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
- l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
- m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;**



n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and**

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis supplied)

The Court has ruled in *People v. Zheng Bai Hui*⁵² that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

At this juncture, it is well to point-out that while the RTC and CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict Garcia. Both courts overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.⁵³ And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases: to prove the guilt of the accused beyond reasonable doubt and⁵⁴ to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.⁵⁵ Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, ***always*** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:⁵⁶

⁵² 393 Phil. 68, 133 (2000).

⁵³ CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

⁵⁴ The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

⁵⁵ *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

⁵⁶ 745 Phil. 237, 250-251 (2014).

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.** (Emphasis and underscoring supplied)

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do so within the bounds of the law.⁵⁷ 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 sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of *shabu* that was evidence herein of the *corpus delicti*. Thus, this adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.⁵⁸

Concededly, Section 21 of the IRR of RA 9165 provides that “noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.” For this provision to be effective, however, the prosecution must first (1) recognize any lapses on the part of the police officers and (2) be able to justify the same.⁵⁹ **In this case, the prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165.**

⁵⁷ *People v. Ramos*, 791 Phil. 162, 175 (2016).

⁵⁸ *People v. Mendoza*, supra note 36, at 764.

⁵⁹ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

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.⁶⁰ As the Court explained in *People v. Reyes*:⁶¹

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 x⁶² (Emphasis supplied)

In *People v. Umipang*,⁶³ 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 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.**⁶⁴ (Emphasis and underscoring supplied)

⁶⁰ See *People v. Sumili*, 753 Phil. 342 (2015).

⁶¹ 797 Phil. 671 (2016).

⁶² Id. at 690.

⁶³ 686 Phil. 1024 (2012).

⁶⁴ Id. at 1052-1053.

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 compromised. In light of this, Garcia must perforce be acquitted.

As a final note, Garcia in the instant case, despite the blatant disregard of the mandatory requirements provided under RA 9165, has been made to suffer incarceration for over a decade. While the Court now reverses this injustice by ordering the immediate release of Garcia, there is truth in the time-honored precept that *justice delayed is justice denied*. Thus, the Court heavily enjoins the law enforcement agencies, the prosecutorial service, as well as the lower courts, to strictly and uncompromisingly observe and consider the mandatory requirements of the law on the prosecution of dangerous drugs cases.

The Court believes that the evil of illegal drugs must be curtailed with decisiveness and resolve. Nonetheless, the sacred and indelible right to due process enshrined under our Constitution, fortified under statutory law, should never be sacrificed for the sake of convenience and expediency. Otherwise, the malevolent mantle of the rule of men dislodges the rule of law. In any law-abiding democracy, this cannot and should not be allowed.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated May 30, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05950 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Evangeline Garcia y Suing is **ACQUITTED** of the crime charged on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action 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

(On leave)
JOSE C. REYES, JR.
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

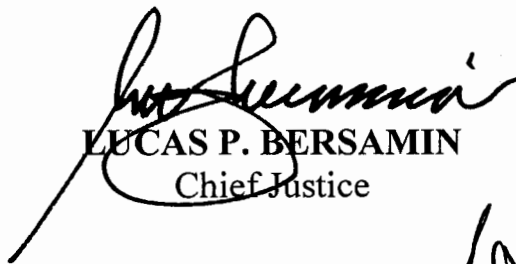
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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