

Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

JUL 19 2019

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 238519**

**Present:**

- versus -

PERALTA, J., Chairperson,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
INTING, JJ.

**DESIREE DELA TORRE y**  
**ARBILLON,**

**Promulgated:**

Accused-Appellant.

June 26, 2019

X-----*Wilfredo V. Lapitan*-----X

**DECISION**

**PERALTA, J.:**

This is an appeal filed by appellant Desiree Dela Torre y Arbillon of the Decision<sup>1</sup> dated July 27, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08268, affirming with modification the Decision<sup>2</sup> dated April 13, 2016 of the Regional Trial Court (RTC) of Makati City, Branch 64 in Criminal Case Nos. 15-1009 and 15-1010.

The antecedent facts are as follows:

On March 14, 2015, at around 11:00 a.m., PSupt. Mario Ignacio alerted his team and tasked them to conduct an anti-narcotics operation in Barangay Palanan, Makati City. Prosecution witness PO1 Mauro Pagulayan was informed that their target was a certain alias "Zandra" who was suspected to

<sup>1</sup> Rollo, pp. 2-13; penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justices Samuel H. Gaerlan and Jhosep Y. Lopez.

<sup>2</sup> CA rollo, pp. 45-51; penned by Judge Gina Bibat-Palamos.

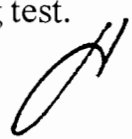
sell illegal drugs in Barangay Palanan. After conducting an anti-narcotics operation in said area, their team, headed by P/Insp. Crisanto Racoma, had a briefing. PO1 Pagulayan was designated as the poseur-buyer. He was given a ₱1,000.00 bill, with serial number RM289309, to be used as marked money. It was also agreed that PO1 Pagulayan would give a pre-arranged signal of scratching the side of his body when the sale was consummated. Meanwhile, PO1 Mario Maramag was designated as police backup, while the rest of the team would serve as perimeter security.<sup>3</sup>

PO1 Maramag coordinated with the Philippine Drug Enforcement Agency and submitted a coordination form in order to legalize the buy-bust operation. Then, PO1 Pagulayan called their regular informant to locate *alias* Zandra. A few hours after, their informant confirmed *alias* Zandra's location and so they proceeded to meet the informant at Cash & Carry in Barangay Palanan. From Cash & Carry, PO1 Pagulayan and the rest of the team proceeded on foot towards Diesel Street. There, a female person whom the informant identified as *alias* Zandra stood at the side of the street. PO1 Pagulayan and the informant approached her and the informant introduced PO1 Pagulayan as his friend who wanted to get *shabu*. *Alias* Zandra asked him how much he needed and he said ₱1,000.00, to which *alias* Zandra replied, "*akin na ang pera.*" PO1 Pagulayan handed the marked money to her and she placed it inside her pocket. Thereafter, *alias* Zandra took out three plastic sachets containing white crystalline substances suspected to be *shabu* and asked PO1 Pagulayan to choose among the three. After he had chosen, *alias* Zandra returned the two plastic sachets inside her left pocket. PO1 Pagulayan placed the sachet containing white crystalline substances suspected to be *shabu* inside his pocket and, thereafter, introduced himself to *alias* Zandra as a policeman. PO1 Maramag then arrived and assisted PO1 Pagulayan in arresting *alias* Zandra. PO1 Pagulayan asked *alias* Zandra to take out from her pocket the marked money, as well as the two other plastic sachets containing white crystalline substances suspected to be *shabu*. PO1 Maramag then informed *alias* Zandra of the Miranda rights. They also called for a barangay official who could witness the inventory of the seized items. However, as a lot of people had already started to gather around them, they decided to head to the barangay hall in Palanan.<sup>4</sup>

Inside the barangay hall, PO1 Pagulayan made an inventory of the seized items and marked the sachet containing white crystalline substances suspected to be *shabu*, subject of the sale, as "M.A.P," and the two other sachets recovered from the appellant as "M.A.P-1" and "M.A.P-2," respectively. The seized items were marked and inventoried in the presence of Barangay Kagawad Jose A. Villa, Jr. The barangay kagawad signed the Inventory Receipt as proof that he was there to witness the inventory of the seized items. Photos of the appellant, as well as the seized items and buy-bust money, were also taken. Then, PO1 Pagulayan prepared a request for laboratory examination, the chain of custody form, and a request for drug test.

<sup>3</sup> *Rollo*, p. 4.

<sup>4</sup> *Id.* at 4-5.



He, thereafter, brought these documents, as well as the seized items, to the crime laboratory. PCI May Andrea Bonifacio conducted a qualitative examination of the three heat-sealed plastic sachets containing white crystalline substances marked as "M.A.P" weighing 0.26 gram, "M.A.P-1" weighing 0.25 gram, and "M.A.P-2" weighing 0.27 gram, and found each one of them to be positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug. She then reduced her findings on Chemistry Report No. D-227-15.<sup>5</sup>

Appellant was charged in two separate informations for violation of Sections 5 and 11 of Republic Act (R.A.) No. 9165 on March 16, 2015, to wit:

In Criminal Case No. 15-1009:

On the 14<sup>th</sup> day of March 2015, in the city of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point twenty six (0.26) gram, a dangerous drug, in consideration of Php1,000.

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

In Criminal Case No. 15-1010:

On the 14<sup>th</sup> day of March 2015, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession, direct custody and control a total of zero point fifty two (0.52) gram of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>7</sup>

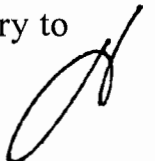
Upon arraignment, appellant pleaded not guilty to both crimes as charged. During pre-trial, the parties agreed to dispense with the testimony of PO3 Voltaire Esguerra and, instead, stipulated on the following: 1) lack of knowledge as to how the appellant was arrested and as to the confiscation of the evidence, and that he was the investigator of the case; 2) he prepared and signed the investigation report, request for drug test, and chain of custody form; 3) he could identify the appellant and the seized items; 4) he signed the inventory receipt of the three pieces of transparent plastic sachets containing white crystalline substances from PO1 Pagulayan; 5) after receiving the seized items from PO1 Pagulayan, he returned the same to the latter for delivery to

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<sup>5</sup> *Id.* at 5.

<sup>6</sup> Records, p. 3.

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



the crime laboratory as appearing in the chain of custody form; and 6) the scanned image of the ₱1,000.00 bill is a faithful reproduction of the original.<sup>8</sup>

The parties likewise agreed to dispense with the testimony of PCI May Andrea Bonifacio and stipulated that: 1) she is connected with the Southern Police District Crime Laboratory as a forensic chemist; 2) she is authorized to conduct qualitative examination on the specimen submitted to their office for the purpose; 3) on March 14, 2015, their office received drug items seized from the appellant for qualitative examination as per Request for Laboratory Examination; 4) she conducted the qualitative examination on the three heat-sealed transparent plastic sachets, with markings “M.A.P,” “M.A.P-1” and “M.A.P-2,” containing white crystalline substances; 5) in the course of the examination, she found the specimens positive for the presence of methamphetamine hydrochloride, a dangerous drug; and 6) she reduced into writing her findings as evidenced by Chemistry Report No. D-277-15. To safeguard the integrity of the specimens, she placed the three sachets in a bigger plastic sachet and marked the same with D-277-15, which corresponds to the Chemistry Report number, and with her initial.<sup>9</sup>

For her part, appellant denied the charges against her. She testified that on March 14, 2015, she was at her boyfriend’s house, together with a friend, when, suddenly, several civilian men entered her boyfriend’s house and started looking for a certain “Tata.” Her boyfriend answered that there was no such person in the house. However, the men still proceeded to search the house and told them to go with them to their office. They were taken to the basement of the Criminal Investigation Division (*CID*). Appellant alleged that the men asked money from them. She added that they were later brought to the barangay hall where their photographs were taken, and two plastic sachets and money were presented. Thereafter, they were asked to go to the SOCO to urinate before they were transported back to the *CID*.<sup>10</sup>

On April 13, 2016, the trial court found appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 15-1009, finding the accused Desiree Dela Torre y Arbillon, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing her to life imprisonment and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00) without subsidiary imprisonment in case of insolvency; and



<sup>8</sup> *Rollo*, p. 3.

<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> *CA rollo*, pp. 109-110.

2. In Criminal Cases Nos. 15-1010, finding the accused Desiree Dela Torre y Arbillon, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing her to an indeterminate penalty of twelve (12) years and one (1) day to fourteen (14) years of imprisonment and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.<sup>11</sup>

On appeal, the CA affirmed the RTC Decision with modification as to the fine imposed. The dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the appeal is DENIED for lack of merit. The Decision dated 13 April 2016 of the Regional Trial Court of Makati, Branch 64 is hereby AFFIRMED with MODIFICATION as to the fine in Criminal Case No. 15-1009 which shall be increased to Php500,000.00 to conform with the imposable fine as provided in Section 5, Article II of RA 9165.

SO ORDERED.<sup>12</sup>

Thus, the instant appeal raising the same issues raised before the appellate court:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF REPUBLIC ACT NO. 9165, DESPITE THE PROSECUTION'S FAILURE TO ADEQUATELY ESTABLISH THE CHAIN OF CUSTODY.

II

THE COURT A QUO GRAVELY ERRED IN DISMISSING THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL FOR BEING EASILY CONCOCTED AND A COMMON DEFENSE PLOY IN CASES INVOLVING DANGEROUS DRUGS.<sup>13</sup>

Appellant would like to impress upon this Court that there were significant deficiencies in the chain of custody which render the identity and integrity of the specimen submitted in evidence. Appellant alleged that the marking of dangerous drugs or related items should be made in the presence of the apprehended violator immediately upon arrest; however, in this case, appellant claimed that the seized drug items were not marked on site, but in the barangay hall, at least an hour or two after the arrest was made.

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<sup>11</sup> Records, p. 144.

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

<sup>13</sup> CA rollo, p. 23.

Appellant likewise claimed that during the physical inventory, only an elected public official, *i.e.*, Barangay Kagawad Jose A. Villa, Jr., was present, in violation of the requirements of R.A. No. 9165. There was also no justifiable ground for the non-compliance. Thus, considering the irregularities and non-compliance with the chain of custody, appellant asserted that she must be acquitted since the law demands that proof beyond reasonable doubt must be established.

We find merit in the petition.

In the instant case, appellant was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of R.A. No. 9165. In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.<sup>14</sup> On the other hand, when an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>15</sup>

However, in order to sustain a conviction in both instances, the identity of the prohibited drug should be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. To remove any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>16</sup>

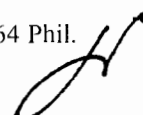
To establish a chain of custody sufficient to make the evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be. In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be.<sup>17</sup> Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic

<sup>14</sup> *People v. Sumili*, 753 Phil. 342, 348 (2015).

<sup>15</sup> *People v. Bio*, 753 Phil. 730, 736 (2015).

<sup>16</sup> See *People v. Viterbo, et al.*, 739 Phil. 593, 601 (2014). See also *People v. Alivio, et al.*, 664 Phil. 565, 576-580 (2011); and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

<sup>17</sup> *People v. Romy Lim y Miranda*, G.R. No. 231989, September 4, 2018.



chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.<sup>18</sup>

Section 21(1), Article II of R.A. No. 9165<sup>19</sup> states:

*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[.]

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 mandates:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.<sup>20</sup>

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165, it incorporated the saving clause contained in the *IRR*, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s

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<sup>18</sup> *Id.*

<sup>19</sup> Took effect on July 4, 2002.

from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In the case of *People v. Mendoza*,<sup>20</sup> the Court stressed that without the insulating presence of the representative from the media or the Department of Justice (*DOJ*), or any elected public official during the seizure and marking of the seized drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the presence of such witnesses would have preserved an unbroken chain of custody.<sup>21</sup>

However, under certain conditions, strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible. The failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>22</sup> The Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had, nonetheless, been preserved.<sup>23</sup> There has to be a justifiable ground for non-compliance to be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>24</sup>

However, in the instant case, the Court finds that the arresting officers committed unjustified deviations from the prescribed chain of custody rule, thus, putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from appellant.

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<sup>20</sup> 736 Phil. 749 (2014).

<sup>21</sup> *Id.* at 764.

<sup>22</sup> See *People v. Goco*, 797 Phil. 433, 443 (2016).

<sup>23</sup> *People v. Almorfe, et al.*, 631 Phil. 51, 60 (2010).

<sup>24</sup> *People v. De Guzman y Danzil*, 630 Phil. 637, 649 (2010).





An examination of the records reveals that the inventory and photography of the seized items were made in the presence of only one witness, *i.e.*, Barangay Kagawad Villa, as evidenced by his signature on the Receipt of Property/Evidence Seized. There was no presence of representatives from either the DOJ and the media. It must be likewise pointed out that the marking and preparation of inventory were not immediately done and were not even made at the place of arrest or at the nearest police station, but were actually done in the barangay hall. This fact was confirmed by PO1 Pagulayan, the poseur-buyer of the buy-bust team that apprehended appellant, in his testimony in the direct and cross examinations, to wit:

**PROSECUTOR**

*Do you have any proof that there was an inventory conducted at the barangay hall?*

**WITNESS**

*Yes, ma'am.*

**PROSECUTOR**

*And what proof do you have?*

**WITNESS**

*The inventory form, ma'am.*

**PROSECUTOR**

If I show to you a copy of that inventory, will you be able to identify it?

**WITNESS**

Yes, ma'am.

**PROSECUTOR**

I have here, Mr. Witness, an Inventory Receipt dated March 14, 2015 already marked as our Exhibit E. Will you please go over this and tell us what relation has this with the Inventory Form which you said was accomplished at the barangay hall?

**WITNESS**

My signature appears there.

**PROSECUTOR**

Witness, Your Honor, is pointing to his signature appearing above the name PO1 Mauro Pagulayan. Mr. Witness, it appears to be handwritten, whose handwriting is this?

**WITNESS**

That is my handwriting, ma'am.

**PROSECUTOR**

And who were present during the inventory?

**WITNESS**

*The elected barangay official.*

**PROSECUTOR**

*Who is that?*



**WITNESS**

*Kag. Jose Villa.*

**PROSECUTOR**

*Who else?*

**WITNESS**

*My back –up Mario Maramag.*

**PROSECUTOR**

How about the accused, where was she during the inventory?

**WITNESS**

She was beside me, ma'am.<sup>25</sup> (Emphases supplied.)

On cross-examination:

**ATTY. PERALTA**

Yes, Your Honor. Mr. Witness, you mentioned in your Sinumpaang Salaysay that the buy bust operation was conducted on March 14, 2015, is that correct?

**WITNESS**

Yes, sir.

**ATTY. PERALTA**

What time did you arrest the accused?

**WITNESS**

Around 2:30, sir.

**ATTY. PERALTA**

In the morning or in the afternoon?

**WITNESS**

In the afternoon, sir.

**ATTY. PERALTA**

And after the arrest, did you immediately conduct the physical inventory of the items that you seized?

**WITNESS**

*No, sir. We decided to go to the barangay hall to conduct the inventory.*

**ATTY. PERALTA**

*Did you immediately go to the barangay hall?*

**WITNESS**

*No, sir, after the buy bust operation, we ordered the suspect to bring out the contents of her pocket.*

**ATTY. PERALTA**

*You conducted the physical inventory of the items that you allegedly seized from the accused?*

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<sup>25</sup> TSN, June 23, 2015, pp. 7-8.

**WITNESS**

*No, sir, we conducted the inventory at the barangay hall.*

ATTY. PERALTA

So, you did the inventory?

WITNESS

Yes, sir.

ATTY. PERALTA

Did you do this immediately?

WITNESS

Yes, sir.

ATTY. PERALTA

What time did you do this?

WITNESS

Around 3:00 to 4:00 in the afternoon.

ATTY. PERALTA

Did you indicate the time when you conducted the physical inventory of the items that you seized, did you indicate it in the inventory receipt?

WITNESS

No, sir.

ATTY. PERALTA

Mr. Witness, you would agree with me that you turned over the items that you seized to PO3 Voltaire Esguerra, is that correct?

WITNESS

Yes, sir.

ATTY. PERALTA

And based on your Chain of Custody Form, PO3 Voltaire Esguerra turned it over to you?

WITNESS

Yes, sir.

ATTY. PERALTA

What time did he turn over it to you?

WITNESS

Around 5:00 o'clock, sir.

ATTY. PERALTA

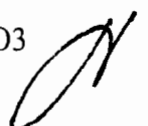
What day?

WITNESS

March 14.

ATTY. PERALTA

Was the time indicated when the items were turned over by PO3 Esguerra?



WITNESS

No, sir.

ATTY. PERALTA

What time did you receive the items from PO3 Esguerra?

WITNESS

Around 5:00 o'clock, sir, I did not know the specific time.

ATTY. PERALTA

Was the time indicated?

WITNESS

No, sir.

ATTY. PERALTA

And after that, you turned over the item that you seized to PCI May Bonifacio?

WITNESS

Yes, sir.

ATTY. PERALTA

Was the time indicated?

WITNESS

Yes, sir.

ATTY. PERALTA

What time?

WITNESS

Around 6:00 o'clock, sir. They put the time there.

ATTY. PERALTA

And during the physical inventory, Mr. Witness, was there a representative from the [DOJ] present?

**WITNESS**

***Only the barangay elected official, sir.***

**ATTY. PERALTA**

***There was none?***

**WITNESS**

***Yes, sir.***

**ATTY. PERALTA**

***Was there a representative from the media present?***

**WITNESS**

***None, sir.***

**ATTY. PERALTA**

***That would be all, Your Honor.<sup>26</sup> (Emphases supplied.)***

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<sup>26</sup> *Id.* at 15-18.

It must be emphasized that the mere marking of the seized drugs, as well as the conduct of an inventory, in violation of the strict procedure requiring the presence of the accused, the media, and responsible government functionaries, fails to approximate compliance with Section 21, Article II of R.A. No. 9165.<sup>27</sup> The presence of these personalities, and the immediate marking and conduct of physical inventory after seizure and confiscation, in full view of the accused, and the required witnesses cannot be brushed aside as a simple procedural technicality.<sup>28</sup> Relative thereto, the prosecution likewise failed to provide any explanation as to why it did not secure the presence of a representative from the DOJ and the media. There was no showing of even an attempt to contact representatives from the DOJ and the media. Minor deviations may be excused in situations where a justifiable reason for non-compliance is explained.<sup>29</sup> However, in the instant case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. A stricter adherence to Section 21 is required where the quantity of the illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.<sup>30</sup>

If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should, nonetheless, rule in favor of the accused, lest it betrays its duty to protect individual liberties within the bounds of law.

Thus, considering that the procedural lapses committed by the arresting officers, which were unfortunately left unjustified, militate against a finding of guilt beyond reasonable doubt against appellant, as the integrity and evidentiary value of the *corpus delicti* had been compromised, the Court is constrained to rule that appellant's acquittal is in order.

**WHEREFORE**, premises considered, the Decision dated July 27, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08268 is **REVERSED** and **SET ASIDE**. Appellant Desiree Dela Torre y Arbillon

<sup>27</sup> *People v. Dela Victoria*, April 16, 2018, G.R. No. 233325.

<sup>28</sup> *Id.*

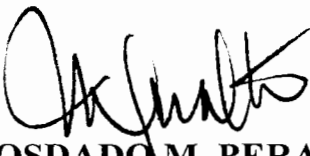
<sup>29</sup> *People v. Crispo*, March 14, 2018, G.R. No. 230065.

<sup>30</sup> *People v. Reyes and Santa Maria*, April 23, 2018, G.R. No. 219953.

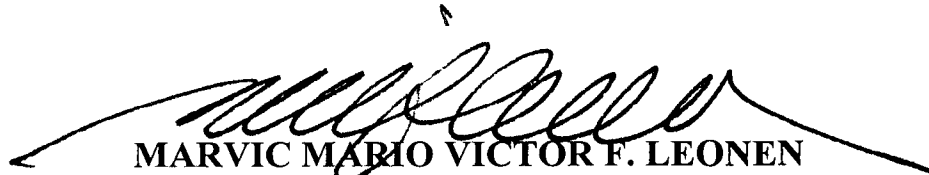
is **ACQUITTED** of the crimes charged for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women for immediate implementation. Said Superintendent is **ORDERED to REPORT** to this Court, within five (5) working days from receipt of this Decision, the action he/she has taken.

**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice


**WE CONCUR:**



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice



**ANDRES B. REYES, JR.**  
Associate Justice



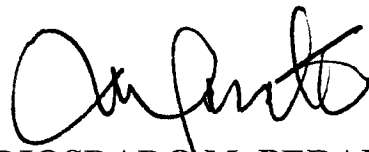
**RAMON PAUL L. HERNANDO**  
Associate Justice



**HENRI JEAN PAUL B. INTING**  
Associate Justice

**ATTESTATION**

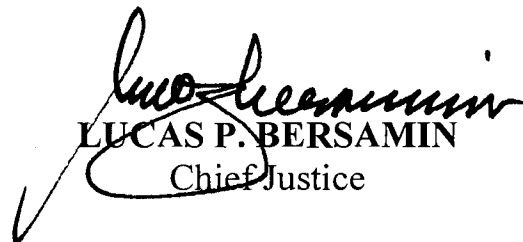
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



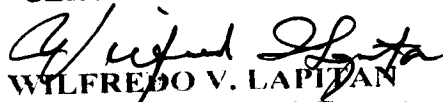
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson, Third Division

**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

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

JUL 19 2019