



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. 234648**

**Present:**

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

- versus -

**ELIZALDE JAGDON y BANAAG**  
**a.k.a. "ZALDY,"**  
Accused-Appellant.

**Promulgated:**

27 MAR 2019

*HM Cabalag Perfecto*

X ----- X

**DECISION**

**REYES, J. JR., J.:**

This is an appeal from the March 30, 2017 Decision<sup>1</sup> of the Court of Appeals-Cebu City (CA) in CA-G.R. CR-HC No. 02249, which affirmed the February 24, 2016 Decision<sup>2</sup> of the Regional Trial Court, Branch 52, Bacolod City (RTC) in Criminal Case Nos. 10-33276/77, finding accused-appellant Elizalde Jagdon y Banaag a.k.a "Zaldy" (Jagdon) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

<sup>1</sup> Penned by Associate Justice Edgardo L. delos Santos, with Associate Justices Edward B. Contreras and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 4-16.  
<sup>2</sup> Penned by Presiding Judge Raymond Joseph G. Javier; *CA rollo*, pp. 65-81.

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### The Facts

In two separate Information<sup>3</sup> both dated March 23, 2010, Jagdon was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions of the information read:

Crim. Case No. 10-33276

x x x x

That on or about the 17<sup>th</sup> day of March, [sic] 2010, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) staple-sealed transparent plastic bag containing forty five (45) knot tied marijuana cigarettes having a total weight of 13.06 grams, in violation of the aforementioned law.<sup>4</sup>

Crim. Case No. 10-33277

x x x x

That on or about the 17<sup>th</sup> day of March, [sic] 2010, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur buyer, PO2 Ian S. Piano, in a [buy bust] operation twelve (12) knot tied marijuana cigarettes with a total weight of 3.53 grams, in exchange of marked money of two (2) one hundred (P100.00) Peso bills bearing Serial Nos. MA518579 and ST105425 and one (1) twenty (P20.00) Peso bill bearing Serial No. ZU158596, in violation of the aforementioned law.<sup>5</sup>

During his arraignment on April 22, 2010 for both offenses, Jagdon pleaded "Not Guilty."<sup>6</sup>

### *Evidence for the Prosecution*

On March 17, 2010, the Office of the City Anti-Illegal Drugs Special Operations Task Force Group (CAID-SOTG) of the Bacolod City Police received a tip from one of their confidential informants (CIs) that Jagdon is selling marijuana in Barangay Handumanan. The Bacolod City Police

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<sup>3</sup> Id. at 6-9.

<sup>4</sup> Id. at 6.

<sup>5</sup> Id. at 8.

<sup>6</sup> Id. at 66.

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organized a buy bust team led by Police Senior Inspector Joemarie Occeño (PSINSP Occeño) and Police Officer 2 Ian Piano (PO2 Piano) as the poseur-buyer. At around 12:45 p.m., the buy bust team proceeded to the location where PO2 Piano and the CI went inside a junk shop where Jagdon allegedly transacted with his customers.<sup>7</sup>

Once inside, the CI, who knew Jagdon, informed him that they wanted to buy 12 sticks of marijuana. PO2 Piano handed over the marked money totalling ₱220.00 to Jagdon, who, in turn, gave 12 sticks of suspected marijuana, which he took from a small blue bag. After the transaction, PO2 Piano identified himself as a police officer and signalled PSINSP Occeño to make the arrest.<sup>8</sup>

During the arrest, Jagdon surrendered the small blue bag he was carrying. PO2 Piano searched the same and found another 45 sticks of suspected marijuana. After marking the recovered drugs, they were inventoried and photographed in the presence of two barangay officials — the barangay secretary and a Purok President. Jagdon and the seized items were then brought to the police station where the incident was recorded in the blotter. Thereafter, the purported marijuana sticks were sent to the crime laboratory for analysis, where they yielded a positive result for marijuana.<sup>9</sup>

### *Evidence for the Defense*

On March 17, 2010, Jagdon was inside his house where he was about to put his son to sleep. His younger brother asked permission to go out of the house, but before he could do so, two persons suddenly barged into their home looking to buy marijuana. Jagdon told them that no one was selling marijuana in their home and one of the men asked if he knew a Rocky, Bongrich, and a Nonoy Gopio. When he denied knowing them, he was handcuffed, while the men, with their five other companions, proceeded to search his house.<sup>10</sup>

### *The RTC Ruling*

In its February 24, 2016 Decision,<sup>11</sup> the RTC convicted Jagdon for violation of Sections 5 and 11, Article II of R.A. No. 9165. The trial court opined that the testimony of PO2 Piano categorically established all the elements of the illegal sale of dangerous drugs. It pointed out that he positively identified Jagdon as the one who gave the sticks of marijuana and received the marked money as payment. The RTC upheld the validity of the

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<sup>7</sup> *Rollo*, pp. 5-6.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 6-7.

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

<sup>11</sup> *Supra* note 2.

buy bust operations highlighting that the CAID-SOTG conducted the operation with the coordination of the Philippine Drug Enforcement Agency. The trial court expounded that Jagdon was also guilty of illegal possession of dangerous drugs as 45 more sticks of suspected marijuana were recovered from him after he was searched as an incident of a lawful arrest.

The RTC upheld the integrity of the drugs seized on account of the observance of the procedure in Section 21 of R.A. No. 9165. The trial court noted that the seized drugs were marked in front of Jagdon and the two barangay officials. It added that the chain of custody was unbroken as all the links of the chain, from the time the drugs were seized until its presentation in court, were satisfactorily proven. The RTC disregarded Jagdon's unsubstantiated claim of frame-up especially since the legitimacy and regularity of the buy bust operation had been established. The dispositive portion reads:

**WHEREFORE**, premises considered, judgment is hereby rendered, as follows:

- (a) In **Criminal Case No. 10-33277** (Sale of Dangerous Drug), finding Accused-Defendant ELIZALDE JAGDON y BANAAG "**GUILTY**", beyond reasonable doubt, of Section 5, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated March 23, 2010. He is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00);
- (b) In **Criminal Case No. 10-33276**, finding Accused-Defendant ELIZALDE JAGDON y BANAAG "**GUILTY**", beyond reasonable doubt, of Section 11, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated March 23, 2010. He is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and eight (8) months, as minimum to seventeen (17) years and eight (8) months, as maximum and to pay a fine of three hundred thousand pesos (₱300,000.00).
- (c) The dangerous drugs subject matter of these cases are hereby confiscated in favor of the government pursuant to Section 20, R.A. No. 9165 and ordered to be turned-over to the Philippine Drug Enforcement Agency (PDEA), Regional Office Six (6) for destruction;
- (d) The Jail Warden of the Bureau of Jail Management and Penology, Male Dormitory, Barangay Taculing, Bacolod City is hereby **ORDERED** to **IMMEDIATELY TRANSFER** Accused-Defendant ELIZALDE JAGDON y BANAAG to the National Bilibid Prison, Muntinlupa City, Metro Manila, for the service of his sentence pursuant to OCA Circular No. 40-2013; and, [sic]

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(e) No pronouncement as to cost.

SO ORDERED.<sup>12</sup>

Aggrieved, Jagdon appealed before the CA.

### ***The CA Ruling***

In its assailed March 30, 2017 Decision, the CA upheld Jagdon's conviction for violation of Sections 5 and 11, Article II of R.A. No. 9165. The appellate court posited that Jagdon was lawfully arrested and subsequently searched by virtue of a legitimate buy bust operation. It noted that PO2 Piano consistently identified Jagdon as the one who sold him 12 sticks of marijuana and from whom 45 additional sticks were recovered. The CA explained that the evidence of the prosecution sufficiently established that the integrity and evidentiary value of the seized marijuana were preserved. The appellate court expounded that PO2 Piano detailed how he had marked the seized drugs in Jagdon's presence and how he handled the same before he turned it over to the crime laboratory for examination. It elaborated that the integrity of the evidence is presumed unless there is a showing of bad faith, ill will, or proof that the evidence had been tampered with.

Further, the CA postulated that Jagdon never questioned the chain of custody before the trial court and was raised only for the first time on appeal. The appellate court pointed out that he never assailed the police's non-compliance with Section 21, Article II of R.A. No. 9165. Thus, the CA surmised that it was too late for Jagdon to question the integrity and evidentiary value of the seized items. It ruled:

**WHEREFORE**, in view of the foregoing premises, the present appeal is hereby **DENIED**. Accordingly, the 24 February 2016 Decision of the Regional Trial Court, Branch 52, Bacolod City in Crim. Case Nos. 10-33276 and 10-33277 finding the accused-appellant guilty beyond reasonable doubt of violation of Section 5 and 11, Article II of R.A. 9165 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>13</sup>

Hence, this appeal, raising:

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<sup>12</sup> CA rollo, pp. 80-81.

<sup>13</sup> Rollo, p. 15.

### The Issue

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF R.A. NO. 9165.

### The Court's Ruling

The appeal is meritorious.

In order to achieve conviction for the illegal sale of dangerous drugs, the following elements must concur: (1) identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment.<sup>14</sup> On the other hand, the elements of the crime of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.<sup>15</sup> In both illegal sale and illegal possession of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*.<sup>16</sup>

It is not difficult to envision why the preservation of the integrity and identity of the drugs seized is crucial in the prosecution of drug offenses. The unique characteristics of illegal drugs render it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise.<sup>17</sup> Thus, it is imperative that it is established that the drugs presented in court as evidence are the very same drugs recovered from the accused in drug offenses.

To ensure that unnecessary doubts on the identity of the evidence are removed, the chain of custody is observed.<sup>18</sup> Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for

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<sup>14</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017).

<sup>15</sup> *People v. Arposeple*, G.R. No. 205787, November 22, 2017.

<sup>16</sup> *People v. Climaco*, 687 Phil. 593, 603 (2012).

<sup>17</sup> *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

<sup>18</sup> *People v. Gayoso*, G.R. No. 206590, March 27, 2017, 821 SCRA 516, 527.

destruction.<sup>19</sup> Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *People v. Kamad*,<sup>20</sup> the Court recognized the following links that must be established in the chain of custody: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. In turn, the requirements under Section 21 of R.A. No. 9165 reinforce the first two links of the chain to make them foolproof against adulteration or planting of evidence.<sup>21</sup>

In the present case, Jagdon laments that the police did not comply with the requirements or procedure set forth in Section 21 of R.A. No. 9165. Particularly, he notes that the witnesses required by law were not present during the marking and inventory of the drugs allegedly recovered from him. Thus, Jagdon believes that the identity and integrity of the drugs in question had been tainted. Meanwhile, the CA points out that there was substantial compliance with the requirements under Section 21 of R.A. No. 9165. The CA likewise opined that Jagdon can no longer assail the police's alleged failure to comply with the procedure laid out in Section 21, Article II of R.A. No. 9165 because he did not challenge the same during trial. The appellate court explained that he is precluded from questioning it for the first time on appeal.

#### *Appeal opens the entire case for review*

When an accused appeals his conviction, he waives his constitutional guarantee against double jeopardy as the entire case is open for review.<sup>22</sup> The Court then renders judgment as law and justice dictate in the exercise of its concomitant authority to review and sift through the whole case and correct any error, even if unassigned.<sup>23</sup> Thus, in *People v. Miranda*,<sup>24</sup> the Court elucidated that an accused may challenge the non-compliance of the procedures under Section 21 of R.A. No. 9165 even for the first time on appeal, to wit:

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<sup>19</sup> Id. at 527-528.

<sup>20</sup> 624 Phil. 289, 304 (2010).

<sup>21</sup> *People v. Que*, G.R. No. 212994, January 31, 2018.

<sup>22</sup> *Escalante v. People*, G.R. No. 218970, June 28, 2017, 828 SCRA 379, 389.

<sup>23</sup> Id. at 389-390.

<sup>24</sup> G.R. No. 229671, January 31, 2018.

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At this juncture, it is important to clarify that the fact that Miranda raised his objections against the integrity and evidentiary value of the drugs purportedly seized from him only for the first time before the CA does not preclude it or even this Court from passing upon the same.

To recount, the CA held that “[any] [l]apses [sic] in the safekeeping of the seized illegal drugs[,] [which affect] their integrity and evidentiary value should be raised at the trial court level.” As basis, the CA cited the case of *People v. Mendoza (Mendoza)*, which in turn, cited the case of *People v. Sta. Maria (Sta. Maria)* wherein it was opined that:

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Notably, *Mendoza, Sta. Maria*, and *Uy*, are all criminal cases for violation of RA 9165, particularly involving objections to the chain of custody of seized drugs, which were then ultimately rejected by the Court since the same were raised only for the first time on appeal.

After a thorough study of these cases, however, this Court holds that the aforesaid declarations espouse misplaced rulings, as the same clearly run counter to the fundamental rule that “an appeal in criminal cases throws the whole case open for review.”

**It is axiomatic that an appeal in criminal cases confers upon the court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from.** Accordingly, “errors in an appealed judgment [of a criminal case], even if not specifically assigned, may be corrected *motu proprio* by the court if the consideration of these errors is necessary to arrive at a just resolution of the case.” The rationale behind this rule stems from the recognition that an accused waives the constitutional safeguard against double jeopardy once he appeals from the sentence of the trial court. As such, it is incumbent upon the appellate court to render such judgment as law and justice dictate, whether it be favorable or unfavorable to him.

Thus, in *People v. Gatlabayan*, this Court considered every glaring deficiency in each link of the custody, even if the same was not raised as an error on appeal, and reversed the judgment of conviction, given that what was at stake was no less than the liberty of the accused.

In *Villareal v. People*, this Court clarified that unlike in civil cases, the assignment of errors in criminal cases is not essential to invoke the court’s appellate review, considering that it will nevertheless review the record, and accordingly, reverse or modify the appealed judgment if it finds that errors which are prejudicial to the rights of the accused have been committed, including those errors “which go to the sufficiency of evidence to convict.”

The rule means that, notwithstanding the absence of an assignment of errors, the appellate court will review the record and reverse or modify the appealed judgment, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the offense charged, but also on prejudicial errors to the right of accused which are

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plain, fundamental, vital, or serious, or on errors which go to the sufficiency of the evidence to convict.

In this case, the Court cannot simply turn a blind eye against the unjustified deviations in the chain of custody on the sole ground that the defense failed to raise such errors in detail before the trial court. Considering the nature of appeals in criminal cases as above-discussed, it is then only proper to review the said errors even if not specifically assigned. **Verily, these errors, which go to the sufficiency of the evidence of the *corpus delicti* itself, would indeed affect the court's judgment in ultimately ascertaining whether or not the accused should be convicted and hence, languish in prison for possibly a significant portion of his life.** In the final analysis, a conviction must prudently rest on the moral certainty that guilt has been proven beyond reasonable doubt. Therefore, 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 betray its duty to protect individual liberties within the bounds of law. (Citations omitted; emphases supplied)

Jagdon can challenge the police's compliance with Section 21 of R.A. No. 9165 even if he merely raised it for the first time on appeal. The issue whether the procedure under the law was observed is relevant as it touches upon the *corpus delicti* itself or the drugs seized from Jagdon as a result of the buy bust operation and his subsequent arrest. Matters which relate to the sufficiency of evidence to convict an accused may be raised at any time, even for the first time on appeal.

Having settled that Jagdon can raise the issue of compliance with Section 21 of R.A. No. 9165 for the first time on appeal, the Court finds that the police had unduly deviated from the prescribed procedure warranting the acquittal of the accused.

*Presence of prescribed witnesses safeguard against planting of evidence*

Section 21(1) of R.A. No. 9165 requires that "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." In short, the marking and inventory must be done not only in the presence of the accused, but also of three additional witnesses, namely: a media person, a representative from the DOJ, and an elected public official.

On the other hand, R.A. No. 10640 amended Section 21(1) of R.A. No. 9165 in that physical inventory and photograph of the seized items must be done in the presence of the accused, a representative of the media or the National Prosecution Service, and an elected public official. The legislative intent behind the amendment is to adjust or relax the requirements under R.A. No. 9165 in view of the substantial number of acquittals in drug cases because of the failure to comply with the prescribed procedure.<sup>25</sup>

Nevertheless, both R.A. No. 9165 and R.A. No. 10640 require the presence of insulating witnesses in the inventory of the seized drugs in a buy bust operation. While the amendatory law may have reduced the number of witnesses required, it did not do away with such requirement. The presence of third-party witnesses in a buy bust operation cannot be gainsaid as it bolsters its legitimacy and regularity in guaranteeing against planting of evidence or frame-up of the accused.<sup>26</sup> Compliance with the third-party witness requirement in Section 21(1) of R.A. No. 9165 is vital as its non-observance necessarily casts doubt on the integrity of the drugs seized, and, in turn, creates reasonable doubt in the conviction of the accused.<sup>27</sup>

Admittedly, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides that non-compliance with the requirements under Section 21 under justifiable grounds, as long as the integrity and evidentiary value of the seized items are preserved by the apprehending team, shall not render void and invalid such seizures of and custody over said items. In *People v. Año*,<sup>28</sup> however, the Court explained that the saving clause in the IRR of R.A. No. 9165 applies only when the prosecution had explained the reason for the deviation from the procedure and the same was justified, to wit:

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 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:

<sup>25</sup> *People v. Oliva*, G.R. No. 234156, January 7, 2019.

<sup>26</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 246-247.

<sup>27</sup> *People v. Cabuhay*, G.R. No. 225590, July 23, 2018.

<sup>28</sup> G.R. No. 230070, March 14, 2018.

(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, 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. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist. (Citations omitted)

In *People v. Señeres, Jr.*,<sup>29</sup> the Court ruled that the prosecution must initiate acknowledging and justifying deviations from the prescribed procedure, to wit:

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. (Emphasis and underscoring supplied)

Thus, the prosecution must identify the requirements of Section 21 of R.A. No. 9165 which were not complied with and provide sufficient justification for its non-observance. In *People v. Reyes*,<sup>30</sup> the Court enumerated examples for justified reasons for non-observance of the witness requirement, viz.:

Clearly, from the very findings of the CA, the requirements stated in Section 21 of R.A. 1965 [sic] have not been followed. There was no representative from the media and the National Prosecution Service present during the inventory and no justifiable ground was provided as to their absence. It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

<sup>29</sup> G.R. No. 231008, November 5, 2018.

<sup>30</sup> G.R. No. 219953, April 23, 2018.

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Further, it must be proven that the police had exerted efforts to comply with the requirements under the law, and that under the given circumstances, their actions were reasonable.<sup>31</sup> Buy busts are planned police operations where the police carefully lay out their strategy in order to arrest those suspected to be involved in illegal drugs. From how they would approach the target and how they would signal to arrest him or her, everything is carefully fleshed out. In addition, it is expected that the police had also considered in their preparation that the procedure or requirements under Section 21 of R.A. No. 9165 are followed, or that reasonable efforts had been exerted to comply but due to justifiable grounds, compliance is rendered impossible or impractical.

Clearly, it is the State's burden to ensure that necessary steps had been taken to ensure that the legitimacy of buy bust operations are not compromised or placed in a position where its integrity is doubted. In fact, the prosecution is bound to explain why the witness requirement was not complied with even if it was not raised by the accused. The Court in *People v. Cariño*,<sup>32</sup> explained, to wit:

Notably, the Court, in *People v. Miranda*, issued a definitive reminder to prosecutors when dealing with drugs cases. **It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings a quo; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”** (Citation omitted; emphasis supplied)

In the case at bench, it is undisputed that the marking and inventory of the items seized from Jagdon without any representative from the media or the DOJ. Also, the presence of the barangay secretary and the Purok President do not satisfy the requirements of Section 21 of R.A. No. 9165. The law did not only require that there must be a public official, but that the said official must likewise be an elected official. As such, none of the mandated witnesses were present at the time the drugs seized from Jagdon were inventoried and photographed.

It is true that the prosecution sufficiently established that PO2 Piano had marked the seized items in Jagdon's presence and had testified how he had handled the drugs recovered until he had forwarded it to the forensic chemist. Nevertheless, the lapse of the police in not securing the required witnesses is not an insignificant one. To reiterate, these witnesses are

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<sup>31</sup> *People v. Angeles*, G.R. No. 218947, June 20, 2018.

<sup>32</sup> G.R. No. 233336, January 14, 2019.

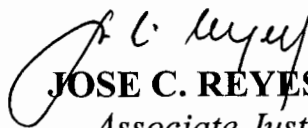
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necessary in order to fortify the first two links in the chain of custody as it insulates the buy bust operation from fear that the evidence was merely planted. For failing to observe the witness requirement, the identity and integrity of the drugs allegedly recovered from Jagdon had been compromised at the initial stage of the operations.


The presence of the third-party witnesses during the marking and inventory of the seized items ensure that the police operations were valid and legitimate in their inception. All the precaution and safeguards observed thereafter would be rendered inutile if in the first place there is doubt as to whether the drugs presented in court were in fact recovered from the accused. In turn, such uncertainty would negatively affect the integrity and identity of the *corpus delicti* itself. When such doubt persists, the courts are left with no other recourse but to acquit the accused of the charges against him.


**WHEREFORE**, the March 30, 2017 Decision of the Court of Appeals-Cebu City in CA-G.R. CR-HC No. 02249 is **REVERSED** and **SET ASIDE**. Accused-appellant Elizalde Jagdon y Banaag a.k.a “Zaldy” is **ACQUITTED**. The Director of the Bureau of Corrections is **ORDERED** to cause his immediate release, unless he is being lawfully held in custody for any other reason.

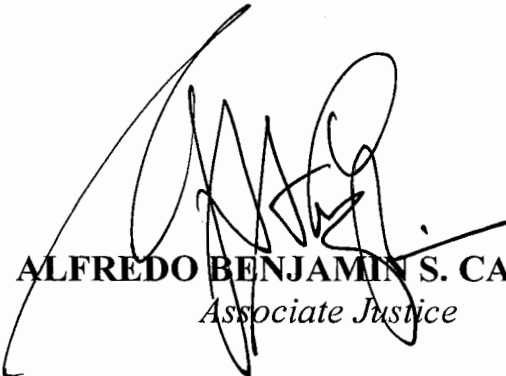
**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*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**  
*Senior 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*

Y