



Republic of the Philippines
Supreme Court
 Manila
SECOND DIVISION

710
 SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 240914

- versus -

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

REYNALD* ESPEJO y RIZALDO,
 Accused-Appellant.

Promulgated:

13 MAR 2019

x-----
[Signature] -x

DECISION

CAGUIOA, J.:

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated February 21, 2018 of the Court of Appeals, Seventh Division (CA) in CA-G.R. CR-HC No. 08989, which affirmed the Consolidated Judgment³ dated December 7, 2016 rendered by the Regional Trial Court, Branch 31, San Pedro City, Laguna (RTC) in Criminal Case No. 14-9583-SPL and Criminal Case No. 14-9584-SPL, finding accused-appellant Reynald Espejo y Rizaldo (Espejo) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The two separate Informations⁵ filed against Espejo for violation of Sections 5 and 11, Article II of RA 9165 pertinently read:

* Spelled as "Reynaldo" in some parts of the CA *rollo* and records.
¹ See Notice of Appeal dated March 12, 2018, *rollo*, p. 14-15.
² *Rollo*, pp. 2-13. Penned by Associate Justice Manuel M. Barrios with Associate Justices Japar B. Dimaampao and Jhesep Y. Lopez, concurring.
³ CA *rollo*, pp. 56-63. Penned by Judge Sonia T. Yu-Casano.
⁴ 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).
⁵ Records, pp. 1-1A.

[Signature]

[Criminal Case No. 14-9583-SPL (Illegal Sale of Dangerous Drugs)]

That on or about March 12, 2014, in the City of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court[,] the above-named accused without any legal authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to SPO1 Victor P. Ver, a police poseur[-]buyer, one (1) small heat-sealed plastic sachet containing MET[H]AMPHETAMINE HYDROCHLORIDE or Shabu, a dangerous [drug], weighing zero point ten (0.10) gram.

CONTRARY TO LAW.⁶ (Emphasis and underscoring supplied)

[Criminal Case No. 14-9584-SPL (Illegal Possession of Dangerous Drugs)]

That on or about March 12, 2014, in the City of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court[,] accused REYNALD ESPEJO y RIZALDO @ Bansot without any legal authority[,] did then and there willfully, unlawfully and feloniously have in his possession, control and custody Methamphetamine Hydrochloride (SHABU)[,] a dangerous drug, placed in four (4) heat sealed transparent plastic sachets, with a total weight of zero point forty (0.40) gram.

CONTRARY TO LAW.⁷ (Emphasis and underscoring supplied)

Upon arraignment, Espejo pleaded not guilty to both charges.⁸

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

The witnesses for the prosecution were SPO1 Victor Ver, and SPO4 Edwin Goyena. The tes[t]imony of Forensic Chemist Donna Villa Huelgas was dispensed with upon stipulation of the parties. x x x

From the prosecution's evidence, it is gathered that on 12 March 2014, at around 9:45 in the morning, operatives from the Philippine National Police (PNP) stationed at the Provincial Intelligence Branch (PIB) of the Laguna Police Provincial Office in Sta. Cruz, Laguna, received a report from a "concerned citizen" that herein accused-appellant (Reynald Espejo a.k.a. "Bansot"), was engaged in illegal drug trade in the area of Laguerta Street, Barangay San Vicente, San Pedro, Laguna.

Initially, a trusted confidential agent was dispatched to verify the report; and when the report was confirmed, SPO1 Ver relayed the information to team leader SPO4 Edwin Goyena who, in turn, communicated with their superior, P/Supt Jerry V. Protacio. Thereafter,

⁶ Id. at 1.

⁷ Id. at 1A.

⁸ *Rollo*, p. 4.

P/Supt Protacio formed a buy-bust team, consisting of SPO1 Ver and the informant as poseur-buyers, SPO4 Goyena as back-up security, and the rest of the team as perimeter security. Incidentally, the informant described accused-appellant as sporting a mustache and was [sic] wearing a grey t-shirt and black shorts on that day. A ₱500.00 buy-bust money was given to SPO1 Ver which he promptly marked with his initials, "VPV" at the right upper portion. The agreed pre-arranged move to signal that the transaction has been carried out was for SPO1 Ver to scratch his head. Lastly, as part of the standard operating procedure, the team prepared the Coordination and Pre-Operation Report and sent them to the Philippine Drug Enforcement Agency (PDEA).

Around 2:00 in the afternoon later that day, the team proceeded to the target area and saw accused-appellant standing by the doorstep of a house while conversing with another person. At a certain point, they saw accused-appellant hand over to that person a plastic sachet of suspected shabu. At about 2:15 in the afternoon, PO1 Ver and the informant alighted from the vehicle. They walked towards accused-appellant who came out of the house. Accused-appellant uttered "*Ilan tol?*" SPO1 Ver replied, "*Lima tol,*" (meaning, ₱500 worth of shabu). SPO1 Ver gave the buy-bust money to accused-appellant. Accused-appellant accepted the money, and then pulled from underneath the ceiling a coin purse from which he retrieved several plastic sachets of suspected shabu. Accused-appellant gave one (1) sachet to SPO1 Ver, and then placed the buy-bust money inside the purse along with the other sachets. At this juncture, SPO1 Ver scratched his head to signal the consummation of the transaction. SPO1 Ver held accused-appellant and introduced himself as a police officer, while the back-up team and the perimeter security rushed in. SPO1 Ver recovered the coin purse that contained four (4) other plastic sachets with the ₱500.00 buy-bust money. At the place of transaction, SPO1 Ver immediately marked all the sachets seized. Thenceforth, they brought accused-appellant and the seized items to the police station, and thereupon, prepared the Request for Laboratory Examination and a Certificate of Inventory. Likewise, photographs of the accused-appellant and the seized items were taken in the presence [of] a representative from the media. After documentation, SPO1 Ver and SPO4 Goyena personally delivered the request and the substances to the PNP Crime Laboratory at Camp Vicente Lim, Calamba City. After chemical examination, the substances were confirmed positive for *methamphetamine hydrochloride*.⁹

Version of the Defense

On the other hand, the defense presented Espejo as the sole witness and the defense's version, as summarized by the CA, is as follows:

In his defense, accused-appellant flatly denied the charges against him, and presented a different version of the incident, asserting that on 12 March 2014, around 9:00 in the morning, he was plying his tricycle along Barangay San Vicente, San Pedro, Laguna. As he was about to convey a passenger bound for Barangay Calendola, some police officers blocked his path and ordered him to go with them because he has a standing warrant of arrest. He yielded and went with them. While on their way to the police

⁹ Id. at 5-6.

station, the police officers asked him about certain individuals named “Baby”, “Pato”, and “Buko” who, however, were not known to him. Upon arrival at the station, he was brought inside a room where he saw for the first time the illegal drugs placed on a table which he was being implicated of selling and possessing.¹⁰

Ruling of the RTC

In the assailed Consolidated Judgment dated December 7, 2016, the RTC ruled that after a careful assessment of the evidence presented by the parties, it is convinced that the evidence adduced by the prosecution proves with moral certainty the presence of all the elements of the crime of Illegal Sale of Dangerous Drugs.¹¹ Not only had the commission of the crime been proven, the integrity of the article sold and its chain of custody from the time it was delivered to the poseur-buyer, to the time it was brought to the police station, to its very delivery to the Philippine National Police (PNP) Crime Laboratory and finally, to its submission to the RTC, have also been proven with moral certainty.¹² It further ruled that the defense of frame-up often imputed to police officers requires strong proof when offered as defense because of the presumption that public officers act in the regular performance of their official duties.¹³

It likewise ruled that the crime of Illegal Possession of Dangerous Drugs was proven with moral certainty.¹⁴ Having been caught *in flagrante delicto* following a buy-bust operation, his subsequent arrest is valid.¹⁵ Considering the legality of the warrantless arrest during the buy-bust operation, the subsequent warrantless search resulting in the recovery of four more plastic sachets of *shabu* from Espejo’s possession is valid and the seized *shabu* is admissible in evidence.¹⁶

The dispositive portion of the Judgment reads:

WHEREFORE, a consolidated judgment is hereby rendered as follows:

1. In Criminal Case No. 14-9583-SPL, accused Reynald Espejo y Rizaldo is found GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165 and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos without subsidiary imprisonment in case of insolvency.

The period of his preventive imprisonment should be given full credit.

¹⁰ Id. at 6-7.

¹¹ CA *rollo*, p. 60.

¹² Id.

¹³ Id. at 60-61.

¹⁴ Id. at 61.

¹⁵ Id.

¹⁶ Id.

2. In Criminal Case No. 14-9584-SPL, accused Reynald Espejo y Rizaldo is hereby found GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act 9165 and he is hereby sentenced to suffer imprisonment of twelve (12) years and one day as minimum to fourteen (14) years and eight months as maximum and to pay a fine of Three Hundred Thousand (P300,000.00) pesos without subsidiary imprisonment in case of insolvency.

The period of his preventive imprisonment should be given full credit.

X X X X

SO ORDERED.¹⁷

Aggrieved, Espejo appealed to the CA.

Ruling of the CA

In the assailed Decision dated February 21, 2018, the CA affirmed Espejo's conviction. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Decision dated 07 December 2016 of the Regional Trial Court, Branch 31, San Pedro City, Laguna, is **AFFIRMED**.

SO ORDERED.¹⁸

The CA ruled that all the elements of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs have been satisfactorily proven by the prosecution.¹⁹ It further ruled that the absence of a Department of Justice (DOJ) Representative and Barangay Official during the inventory is of no consequence.²⁰ In cases involving dangerous drugs, the mandatory procedure of Section 21 of RA 9165 and its Implementing Rules and Regulations (IRR) require only substantial compliance.²¹ The alleged discrepancies in the testimonies of SPO1 Victor Ver (SPO1 Ver) and SPO4 Edwin Goyena (SPO4 Goyena) as to who had actual custody of the drugs do not necessarily mean that their declarations are not credible and that their testimonies should be completely discarded as worthless.²² Neither is the failure to present the police investigator, PO2 Jonielyn Tanael and a certain SPO1 Reposar who supposedly received the drug substances at the crime laboratory a fatal factor against the prosecution, since it has the discretion on

¹⁷ Id. at 61-62.

¹⁸ *Rollo*, p. 13.

¹⁹ Id. at 8.

²⁰ Id. at 9.

²¹ Id. at 9-10.

²² Id. at 11.



how to present its case and the right to choose whom it wishes to present as witnesses.²³ As long as the unbroken chain of custody of the seized drugs was clearly established and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.²⁴

Hence, the instant appeal.

Issue

Whether Espejo's guilt for violation of Sections 5 and 11 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense²⁵ and the fact of its existence is vital to sustain a judgment of conviction.²⁶ It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.²⁷ Thus, in order to obviate any unnecessary doubt on their identity, 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.²⁸

In this regard, Section 21, Article II of RA 9165,²⁹ the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision

²³ Id.

²⁴ Id. at 11-12.

²⁵ *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

²⁶ *Derilo v. People*, 784 Phil. 679, 686 (2016).

²⁷ *People v. Alvaro*, G.R. No. 225596, January 10, 2018, 850 SCRA 464, 479.

²⁸ *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

²⁹ 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[.]



requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (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 DOJ**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.³⁰

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.³¹ **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;³² and, 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 of the items void and invalid. 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.³³ It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.³⁴ Without any justifiable explanation, which must be proven as a fact,³⁵ the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.³⁶

The buy-bust team failed to comply with the mandatory requirements

³⁰ See RA 9165, Art. II, Sec. 21 (1) and (2).

³¹ IRR of RA 9165, Art. II, Sec. 21(a).

³² *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³³ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

³⁴ *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁵ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁶ *People v. Gonzales*, 708 Phil. 121, 123 (2013).

under Section 21.

In the present case, the buy-bust team failed to strictly comply with the mandatory requirements under Section 21, paragraph 1 of RA 9165.

First, none of the three required witnesses was present at the time of arrest of the accused and the seizure of the drugs. The conduct of the marking, inventory, and taking of photograph at the police station was not done in the presence of a DOJ representative and an elected barangay official – it was done only before a media representative. **Neither can it be shown from the respective testimonies of the arresting officers that reasonable efforts were exerted to contact the other required witnesses.** As testified by SPO4 Goyena:

- Q37. When you arrived at your office, at PIB, Laguna Provincial Officer [sic], what if any, did you do?
- A. We prepared the necessary documents like the request for laboratory examination, request for drug test, the receipt for physical inventory, and took the mug shot of the accused, sir.

x x x x

Q39. During the inventory, who were present?

A. The media man, Mr. Ding Bemudez, sir.³⁷ (Emphasis and underscoring supplied)

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,³⁸ 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 v. Mendoza*,³⁹ 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

³⁷ TSN, October 6, 2015, p. 6.

³⁸ G.R. No. 228890, April 18, 2018.

³⁹ 736 Phil. 749, 764 (2014).

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.”⁴⁰

Second, the buy-bust team failed to offer any explanation for its failure to strictly comply with the requirements of Section 21.

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*,⁴¹

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**

⁴⁰ *People v. Tomawis*, supra note 38, at 11-12.

⁴¹ G.R. No. 231989, September 4, 2018.



before the offenders could escape.⁴² (Emphasis in the original and underscoring supplied)

None of the abovementioned circumstances was attendant in the case. The buy-bust team could have strictly complied with the requirements of Section 21 since at the time they arrested the accused, as narrated by the witnesses for the prosecution, Espejo was alone at home. Thus, there was no apparent reason for them to delay and postpone the conduct of inventory and photographing of the seized items at the police station.

Moreover, the fact that they were able to contact a media representative to be present at the police station during the physical inventory and photographing of the illegal drugs seized means that they also had sufficient time and resources to contact the other mandatory witnesses. However, they utterly failed to do so and offered no explanation regarding this matter.

In this connection, it has been repeatedly held by the Court that 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 illegal 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.⁴³

The saving clause does not apply to this case.

As earlier stated, following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.**⁴⁴ If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the non-compliance with the mandatory requirements of Section 21. In this regard, it has also been emphasized that the State bears the burden of proving the justifiable cause.⁴⁵ Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.⁴⁶

⁴² Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

⁴³ *People v. Musor*, G.R. No. 231843, November 7, 2018.

⁴⁴ COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, as amended by RA 10640, § 21 (1).

⁴⁵ *People v. Beran*, 724 Phil. 788, 822 (2014).

⁴⁶ *People v. Reyes*, 797 Phil. 671, 690 (2016).



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* have consequently been compromised.⁴⁷ As the Court explained in *People v. Reyes*:⁴⁸

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 x⁴⁹ (Emphasis supplied)

In the present case, the prosecution neither recognized, much less tried to justify or explain, the buy-bust team's deviation from the procedure contained in Section 21. The police officers did not offer any justifiable reason for the absence of the required witnesses during the buy-bust operation itself, especially where, as here, they could have done so.

The integrity and evidentiary value of the *corpus delicti* have thus been compromised, thus necessitating the acquittal of Espejo.

The presumption of innocence of the accused is superior over the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.⁵⁰ The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.⁵¹

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.⁵² The presumption of regularity in the performance of duty cannot overcome the stronger presumption of

⁴⁷ *People v. Sumili*, 753 Phil. 342, 352 (2015).

⁴⁸ *Supra* note 46.

⁴⁹ *Id.* at 690.

⁵⁰ 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."

⁵¹ *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

⁵² *People v. Mendoza*, *supra* note 39, at 769-770.



innocence in favor of the accused.⁵³ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.⁵⁴

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. The Court has ruled in *People v. Zheng Bai Hui*⁵⁵ 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.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. Also, the elements of illegal possession of drugs were not satisfactorily proven by the prosecution. The successful prosecution of illegal possession of drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of the dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the dangerous drugs.⁵⁶ For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that the integrity thereof has been well-preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court.⁵⁷ In this case, the prosecution utterly failed to prove that the integrity and evidentiary value of the seized drugs were preserved. The same breaches of procedure in the handling of the illegal drug subject of the illegal sale charge equally apply to the illegal drug subject of the illegal possession charge. Corollary, the prosecution was not able to overcome the presumption of innocence of Espejo.

Moreover, considering that the warrantless arrest of the accused was illegal, the subsequent warrantless search resulting in the recovery of four more plastic sachets of *shabu* from Espejo's possession is invalid and the seized *shabu* is inadmissible in evidence being under the law, "fruit of the poisonous tree."⁵⁸ Espejo must perforce also be acquitted of the charge of violating Section 11, RA 9165.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21

⁵³ Id.

⁵⁴ *People v. Catalan*, 699 Phil. 603, 621 (2012).

⁵⁵ 393 Phil. 68, 133 (2000).

⁵⁶ *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

⁵⁷ Id.

⁵⁸ *People v. Alicando*, 321 Phil 656 (1995).

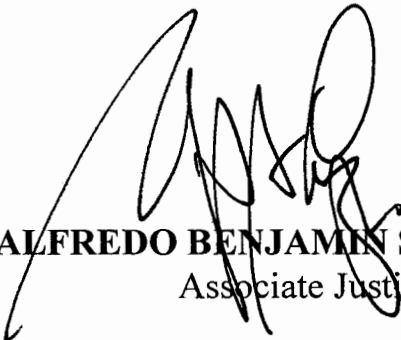


of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.⁵⁹


WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 21, 2018 of the Court of Appeals, Seventh Division in CA-G.R. CR-HC No. 08989, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Reynald Espejo y Rizaldo** is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa 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

⁵⁹ See *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.



ESTELA M. PERLAS-BERNABE
 Associate Justice


JOSE C. REYES, JR.
 Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice

ATTESTATION

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


ANTONIO T. CARPIO
 Associate Justice
 Chairperson, Second Division

CERTIFICATION

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


LUCAS P. BERSAMIN
 Chief Justice

