



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 15, 2021**, which reads as follows:*

“G.R. No. 242878 (*People of the Philippines vs. Rowell Honoras y Sang-Olan*) – For the Court’s review is the January 30, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08504, which affirmed the August 3, 2016 Decision² of Branch 272 of the Marikina City Regional Trial Court (RTC) in Crim. Case No. 2009-3694-D-MK.

The RTC found accused-appellant Rowell S. Honoras (*Honoras*) guilty beyond reasonable doubt of attempted sale of dangerous drugs, defined and penalized under Section 26(b), in relation to Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as “*The Comprehensive Dangerous Drugs Act of 2002*.” Honoras was, therefore, sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of ₱500,000.00.

THE ANTECEDENT FACTS

In an Information dated August 20, 2009, Department of Justice State Prosecutor Alexander Q. Suarez charged herein appellant and Raymond P. De Guzman (*De Guzman*) for violation of Section 5, Article II of R.A. 9165, the accusatory portion of which reads:

That on or about the 18th day of August 2009, in Marikina City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together, and all of them mutually helping and abetting one another, did then and there willfully, unlawfully and feloniously sell, convey or distribute to a poseur-buyer two (2) transparent plastic sachets, respectively containing 3.2229 grams and 2.6086 grams of Methamphetamine Hydrochloride (shabu), a dangerous drug, in violation of the above-cited law.

¹ Penned by Associate Justice Jose C. Reyes, Jr. (retired member of this Court), with Associate Justices Elihu A. Ybañez and Pedro B. Corales, concurring; *Rollo*, pp. 2-15.

² *CA.rollo*, pp. 28-47. Penned by Judge Felix P. Reyes.

CONTRARY TO LAW.³

Upon arraignment on June 8, 2011, both Honoras and De Guzman entered a plea of “not guilty” to the offense charged.⁴

Version of the Prosecution

Trial on the merits then ensued, with the prosecution first to present its case. It was established that, on August 17, 2009 at around 9:30 a.m., a confidential informant tipped Intelligence Officer 2 Lexington Alonzo (*IO2 Alonzo*) of the Philippine Drug Enforcement Agency (*PDEA*)-Metro Manila Regional Office that a prominent group engaged in the proliferation of dangerous drugs was allegedly operating in Marikina City. The informant reported that the group was carrying out its operations through Honoras, whose trust and confidence he had therefore gained. Accordingly, IO2 Alonzo instructed the informant to contact appellant. On the phone with Honoras, the informant and Intelligence Officer 1 Derwin Reed (*IO1 Reed*) made arrangements for the purchase of ₱64,000.00 worth of Methamphetamine Hydrochloride, otherwise known as *shabu*. The transaction was set to take place around Vista Valley Subdivision in Marikina City.⁵

An arresting team was then formed, led by IO2 Alonzo and composed of IO1 Reed, Intelligence Agent 2 George Paul Alcovindas (*IA2 Alcovindas*), and three others. IO1 Reed was designated as poscur-buyer and IA2 Alcovindas as the back-up arresting officer. As buy-bust money, only two genuine ₱500.00 bills were to be used, with the rest of the purchase price made up of false currency.⁶

On August 17, 2009 at around 3:30 p.m., the team arrived at Vista Valley Subdivision. However, upon arrival, they were informed by Honoras via cellphone that the transaction had to be postponed to the following day. The officers then returned to their headquarters to discuss the operation’s new plan.⁷

On August 18, 2009 at around 10:30 a.m., the informant arrived at the team’s headquarters to report that the transaction was set to push through. The informant and Honoras planned to meet at the Marikina Sports Complex and then proceed to Riverbanks, where they would rendezvous with the team for the consummation of the deal. Accordingly, the officers were dispatched, arriving at the target location at around 1:30 p.m. After a few minutes,

³ *Id.* at 28.

⁴ *Id.*

⁵ *Rollo*, pp. 3-4.

⁶ *Id.* at 4.

⁷ *Id.* at 4-5.

Honoras called the informant and told him that the meeting place had been changed to Sta. Elena Church. The team then proceeded to the church to station themselves in its immediate vicinity. IO1 Reed and the informant waited for Honoras about five to ten meters away from the service vehicle, from which IA2 Alcovindas would observe the transaction's consummation.⁸

Eventually, a red Nissan parked near IO1 Reed and the informant. The latter was able to confirm that Honoras was inside the vehicle, as its windows were not tinted. Honoras then opened the passenger-side window and instructed the informant as well as IO1 Reed to board the vehicle. As he entered, IO1 Reed noticed two persons already inside – De Guzman was driving and on the passenger seat beside him was Honoras. Honoras subsequently asked IO1 Reed for the payment, but the latter retorted that he wanted to see the *shabu* first. After reaching for his right pocket, Honoras handed IO1 Reed a container that held two (2) sachets. IO1 Reed examined the contraband to determine its authenticity, concluding that he had, in fact, received *shabu*.⁹

Notably, IO1 Reed never handed the buy-bust money to any of the accused.¹⁰

IO1 Reed then surreptitiously used his cellphone to contact IA2 Alcovindas to signify that the transaction had been consummated. As a consequence, the apprehending team immediately rushed to surround the accused's vehicle, blocking Honoras and De Guzman from fleeing. IA2 Alcovindas, armed at the time with a .45 caliber pistol, opened the front door, ordered Honoras and De Guzman to alight, and introduced himself as a PDEA agent. He arrested De Guzman, while IO1 Reed arrested Honoras. Thereafter, IO1 Reed read the accused their constitutional rights.¹¹

As the arrest had caused a commotion, onlookers began to gather around the crime scene. IO2 Alonzo was, therefore, constrained to order his team to proceed to *Barangay Pinyahan*, Quezon City, without marking the evidence at the place of arrest. After around one to two hours, the arresting team, with both accused in their custody, arrived at the *barangay* hall. Then and there, IO1 Reed marked the two (2) plastic sachets handed to him by Honoras, while IA2 Alcovindas photographed the evidence in the presence of *Barangay Kagawad* Belinda Gaffud. The inventory was also prepared immediately upon arrival at the *barangay* hall.¹²

After the marking and the inventory, the arresting officers returned to

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.* at 5-6.

¹² *Id.*

their headquarters, together with both accused. The team then brought the confiscated articles to their forensic laboratory for the conduct of a qualitative examination. Forensic Chemist Jappeth Santiago examined the specimen and the urine samples taken from the accused, and prepared Chemistry Report No. PDEA-DD-168-09 and Chemistry Report No. PDEA-DT132-09.¹³ It was confirmed that the confiscated articles were indeed *shabu*, and both Honoras and De Guzman tested positive for the use of the drug.¹⁴

Version of the Defense

For its part, the defense alleged denial and frame-up. It was claimed that, on August 18, 2009 at around 11:00 a.m., Honoras was eating breakfast when his friend, Bonn Gabriel Guevarra (*Guevarra*), arrived, together with De Guzman, at his Marikina City residence. Guevarra asked Honoras whether he knew anyone who sold *shabu*, to which the latter replied in the negative. Honoras then suggested to Guevarra that he inquired from De Guzman. De Guzman, in turn, told them that he knew a certain Marlon Santos (*Santos*), who was then engaged in the illicit drug trade. De Guzman, therefore, invited Guevarra and Honoras to accompany him to meet Santos. The two acceded, but Guevarra needed to get the money first, so he instructed Honoras and De Guzman to wait for him near *Kapitan Moy*, along J.P. Rizal.¹⁵

At around 1:30 p.m., Honoras and De Guzman arrived at *Kapitan Moy*. There, they saw Guevarra waving his hand, signaling them to park their vehicle. As they were about to stop, they were blocked by two other vehicles, one in front and the other behind, leaving them unable to flee. Thereafter, eight armed men in civilian attire alighted from the vehicles, which seemed to display no noticeable markings. The armed men pointed their guns at Honoras and De Guzman and instructed them to each board one of the vehicles. Honoras and De Guzman were then brought to the PDEA headquarters, where a urinalysis was conducted at the forensic laboratory.¹⁶

At around 8:00 p.m., the arresting team brought Honoras and De Guzman to the *barangay* hall of *Barangay Pinyahan*, Quezon City, where both accused were forced to sign a document. Honoras and De Guzman were also made to point at an item, which—unknown to them at the time—would later be used against them as evidence in the instant case. Photographs were then taken of them pointing at the article. Since Honoras and De Guzman refused to admit that what they were pointing at was *shabu*, the arresting team brought them back to the PDEA headquarters, where they were detained from 9:00

¹³ *Id.* at 29.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.*

¹⁶ *Id.* at 7-8

p.m.¹⁷

Essentially, Honoras and De Guzman claimed that the PDEA operatives planted the evidence against them.

Ruling of the RTC

On August 3, 2016, the RTC convicted Honoras of violating Section 26(b), in relation to Section 5, Article II of RA 9165, sentencing him to suffer the penalty of life imprisonment. De Guzman, however, was acquitted on reasonable doubt. According to the trial court, the fact that IO1 Reed never handed the buy-bust money to either of the accused “cast doubt as to the completeness and consummation of the buy-bust operation.”¹⁸ Nevertheless, since the mere attempt to sell dangerous drugs is punished by law as sale itself, the omission to transfer the money was held to have no effect on criminal liability.¹⁹

As regards Honoras, the RTC ruled that his act of handing the *shabu* to IO1 Reed constituted a “very clear and categorical action” indicating the sale of dangerous drugs. Surely, Honoras had thereby commenced the commission of the crime directly by the overt act of transferring possession of the contraband to the arresting officer. His involvement in the offense charged could therefore not be questioned.²⁰ On the other hand, as regards De Guzman, the RTC ruled that the prosecution had failed to prove his participation. His mere presence at the crime scene, being the driver of Honoras, was held insufficient to support the conclusion that he was a co-conspirator.²¹ The trial court, therefore, disposed of the case, *viz.*:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused ROWEL HONORAS y SANG-OLAN in the above-entitled case, GUILTY beyond reasonable doubt of violation of Section 26, paragraph [b], in relation to Section 5, Article II of R.A. 9165 and hereby sentences them to suffer the penalty of **LIFE IMPRISONMENT** and a **FINE** of Five Hundred Thousand (P500,000.00), without subsidiary imprisonment in case of insolvency.

The period during which the said accused was in detention during the pendency of this case shall be credited to him in full provided that he agrees to abide by and comply with the rules and regulations of the City Jail of Marikina.

With respect to accused, RAYMOND DE GUZMAN y PAREDES, for failure on the part of the prosecution to prove his guilt beyond reasonable

¹⁷ *Id.* at 8.

¹⁸ *CA rollo*, p. 43.

¹⁹ *Id.* at 44-45.

²⁰ *Id.* at 44.

²¹ *Id.* at 45.

doubt, said accused is hereby ACQUITTED of the charge against him in the said criminal information.

The shabu with a total weight of 5.8315 grams subject of the above-captioned case is hereby confiscated in favor of the government. The Branch Clerk of Court, Atty. Markova L. Jacinto is directed to cause the immediate delivery and transportation thereof to the Philippine Drug Enforcement Agency (PDEA) for proper disposition in accordance with law.

Let a copy of this Decision be furnished the Director of the Philippine Drug Enforcement Agency (PDEA), the National Police Commission (NAPOLCOM) and the office of the Vice-Mayor of Marikina City.

SO ORDERED.²³

The case was, thereafter, elevated to the CA.

Ruling of the Court of Appeals

On January 30, 2018, the CA rendered the herein assailed Decision, affirming the conviction of Honoras. Adding to the RTC's discourse, the appellate court found that the prosecution had duly established the chain of custody of the seized items. From the time of the arrest up to the team's arrival at the *barangay* hall of *Barangay* Pinyahan, the subject *shabu* was in the possession of IO1 Reed. When the team arrived at the *barangay* hall, IO1 Reed marked the sachets containing *shabu* with his initials, "DGR," and the date, "18 Aug 2009." Pictures of the contraband were then taken in the presence of the accused and an elected public official. Subsequently, IO1 Reed delivered the articles to the PDEA Laboratory for the conduct of a qualitative examination. As per the consequent Chemistry Report No. PDEA-DD168-09, it was confirmed that what was seized was indeed *shabu*. To the trial court, these circumstances showed that the arresting officers had duly undertaken steps to preserve the integrity and evidentiary value of the confiscated drugs. Hence, the conviction of Honoras was affirmed, *viz.*:

WHEREFORE, the appealed Decision dated August 3, 2016 of the Regional Trial Court of Marikina City, Branch 272, in Criminal Case No. 2009-3694-D-MK is hereby **AFFIRMED**.

SO ORDERED.²³

Hence, this appeal.

²² *Id.* at 47.

²³ *Id.* at 14-15.

THE ISSUE

WHETHER OR NOT THE CA AND THE RTC ERRED IN CONVICTING HONORAS OF VIOLATING SECTION 26(B), IN RELATION TO SECTION 5, ARTICLE II OF RA 9165.

RULING OF THE COURT

The appeal is impressed with merit.

Honoras was charged of violating Section 5 of R.A. 9165, which punishes the illegal sale of dangerous drugs. To sustain a conviction under this provision, the following must be established beyond reasonable doubt:

First, the identity of the buyer and the seller, the object of the sale, and its consideration; and

Second, the delivery of the thing sold and the payment therefor.²⁴

The courts *a quo* ruled that Honoras could only be held liable for the attempted sale of *shabu*, as he and IO1 Reed never consummated the transfer of the buy-bust money. Notably, however, attempted sale carries with it the same penalty as sale itself.²⁵ Thus, the CA, citing *People v. Laylo*,²⁶ held that the interruption of the entrapment operation, resulting in IO1 Reed's failure to hand the buy-bust money over to Honoras, was not a circumstance that substantially affected the latter's criminal liability.

Honoras, for his part, takes no issue as to the finding of attempted sale. Instead, his appeal is hinged on what he perceives to be the arresting team's failure to comply with the requirements of the chain of custody rule. In his Supplemental Brief,²⁷ Honoras points the two circumstances that warrant him the reversal of his conviction: *first*, the apprehending team's failure to immediately mark the confiscated drugs at the place of arrest; and, *second*, the absence of the required witnesses during the conduct of the inventory.²⁸ According to Honoras, these two breaks in the link of the chain of custody cast doubt on the integrity and identity of the subject *shabu* as it heightens the possibility of tampering and abuse by the apprehending officers.²⁹

The Court finds the argument meritorious.

²⁴ *People v. Oliva*, G.R. No. 234156, January 7, 2019.

²⁵ Republic Act No. 9165, Art. II, Sec. 26(b).

²⁶ G.R. No. 192235, July 6, 2011.

²⁷ *Rollo*, pp. 45-85.

²⁸ *Rollo*, pp. 45-46.

²⁹ *Rollo*, p. 72.

The successful prosecution of criminal actions involving dangerous drugs depends in part on the *admissibility into evidence* of the subject contraband. This is so because, in drugs cases, the prohibited articles confiscated from the accused comprise the very *corpus delicti* of the charges. Accordingly, it is of paramount importance that the identity of the seized items be established beyond reasonable doubt. In order to do so, the prosecution must prove that the illicit substance or paraphernalia recovered during the buy-bust operation is exactly the same as that offered in evidence before the court.³⁰

For this purpose, R.A. 9165 prescribes the manner of authenticating real evidence in drugs cases.³¹ The *chain of custody rule* requires the prosecution to establish that the physical transfer of the subject contraband from its confiscation from the accused up to its presentation in court—was made in such a manner that would render the planting of or tampering with evidence highly improbable. In *People v. Lim*,³² the Court succinctly stated the rationale for the rule in this wise:

Specifically in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.³³ (Emphasis omitted)

In this jurisdiction, Dangerous Drug Board Regulation No. 1, series of 2002, defines chain of custody as:

[T]he 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 destruction. Such record of movements and custody of 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.³⁴

Jurisprudence enumerates four links that make up the chain of custody, and, in order to secure conviction, each must be proved with the same degree of certitude as the commission of the crime itself, *viz.*:

³⁰ *Olivia, supra.*

³¹ *People v. Lim*, G.R. No. 231989, September 4, 2018.

³² *Id.*

³³ *Id.*

³⁴ Dangerous Drug Board Regulation No. 1, s. 2002, Sec 1(b).

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the seized illegal drug by the apprehending officer to the investigating officer;

Third, the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the illegal drug from the forensic chemist to the court.³⁵

Serving as the statutory basis for the chain of custody rule, Section 21 of R.A. 9165 is instructive to law enforcement units engaged in anti-drug operations. The provision lists the officers authorized to handle seized drugs or drug paraphernalia, their respective duties, as well as when and to whom they must turn over the confiscated articles, *viz.*:

Section 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of

³⁵ *People v. Gayoso*, G.R. No. 206590, March 27, 2017.

dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained[.]³⁶ (Emphasis and underscoring supplied)

Juxtaposing Honoras' arguments with Section 21, it is readily ascertainable that he relies on the first paragraph for the reversal of his conviction. Relative thereto, the apprehending team, upon seizure and confiscation of the subject *shabu*, should have ***immediately photographed and physically inventoried*** the same in the presence of Honoras, or his representative or counsel, a representative from the media, a representative from the DOJ, and any elected public official.³⁷ It has been held that the prompt carrying out of this procedure may be excused only when the safety and security of the arresting officers and of the required witnesses, or of the evidence are threatened by immediate or extreme danger, such as retaliatory action from those who have the resources and capability to mount a counter-assault.³⁸

Expounding on this requirement, the Court acquitted the accused in *People v. Lim*³⁹ because the witnesses required by law, *i.e.*, the DOJ and the media representative, were absent during the photograph-taking and conduct

³⁶ Republic Act No. 9165, Article II, Sec. 21.

³⁷ *People v. Coronel*, G.R. No. 229047, April 16, 2018.

³⁸ *People v. Romy Lim y Miranda*, *supra* note 30.

³⁹ *Id.*

of the inventory. It was held that it is mandatory to secure their attendance and that failure to do so is excusable only in instances such as:

First, when it is impossible to secure their attendance because the place of arrest is remote;

Second, when their safety is threatened by immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;

Third, when it is elected officials who are involved in the punishable act/s;

Fourth, when earnest efforts to secure their presence 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

Fifth, when time constraints and urgency prevent the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.⁴⁰

Here, only one out of the three required witnesses was present during the marking and inventory stage. There were no representatives from the media and the DOJ. The arresting officers, likewise, failed to allege that earnest efforts were made to secure the attendance of these witnesses. To recapitulate, the prosecution witnesses testified that the tip was received at 9:30 in the morning of August 17, 2009 and that the buy-bust operation was rescheduled to the following day due to last minute changes.⁴¹ Clearly, they had ample time prior to the arrest and could have secured the attendance of the other witnesses as well had they really wanted to. As to the belated marking of the subject contraband, the prosecution witnesses failed to present evidence to substantiate their claim that there was an actual commotion or viable threat which prevented them from adhering strictly to the rules, *i.e.*, marking the confiscated drugs at the place of arrest.

To the Court's mind, the lower courts relied so much on the narration of the prosecution witnesses that the integrity and evidentiary value of the seized drugs were preserved without taking into account the weight of these unjustified lapses.

In *People v. Lim*,⁴² the Court reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the presence of the required witnesses were made. In addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1(A.1.10) of the Chain of Custody

⁴⁰ *Id.*

⁴¹ CA rollo, pp. 59, 61.

⁴² *Supra* note 30.

Implementing Rules and Regulations should be enforced as a mandatory policy. The pertinent portions of the Decision reads:

To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Sections 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/ affidavits of the apprehending/ seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/ confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before UJs. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, the following should henceforth be enforced as a mandatory policy:

1. In the sworn statements/ affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/ confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.⁴³

Simply put, the prosecution cannot simply invoke the saving clause

⁴³ *Id.*

found in Section 21 - that the integrity and evidentiary value of the seized items have been preserved - without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People of the Philippines v. Umipang*⁴⁴ is instructive on the matter:

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.⁴⁵ (Citations omitted)

⁴⁴ 686 Phil. 1024 (2012).

⁴⁵ *Id.* at 1053-1054.

The prosecution's failure to justify its non-compliance with the requirements found in Section 21, specifically, the place where the evidence is marked and the presence of the three required witnesses during the actual inventory of the seized items, is fatal to their case. These procedural lapses constitute a substantial gap in the chain of custody. As such, it cannot be cured by the simple expedient of invoking the saving clause. A substantial gap or break in the chain of custody casts serious doubt on the integrity and evidentiary value of the *corpus delicti*. Hence, petitioner must be acquitted.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution⁴⁶ that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People vs. Hilario*,⁴⁷ the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.⁴⁸

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated January 30, 2018 of the Court of Appeals in CA-G.R. CR- HC No. 08504 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **ROWELL HONORAS y SANG-OLAN** is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General is directed to report to this Court, within five days from receipt of this Resolution. That a copy also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

⁴⁶ Article III, Section 14(2) of the Constitution mandates: (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

⁴⁷ G.R. No. 210610, January 11, 2018, 851 SCRA 1.

⁴⁸ *Id.* at 30.

SO ORDERED.” (Carandang, J., designated as additional Member vice per Raffle dated January 29, 2020.)

By authority of the Court:

MisfDCBatt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
G.R.
2/4/21

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(Crim. Case No. 2009-3694-D-MK)

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