

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ALVIN FATALLO Y ALECARTE A.K.A. & ALVIN PATALLO Y ALECARTE, ACCUSED-APPELLANT.

G.R. No. 218805. November 07, 2018

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CAGUIOA, J:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Alvin Fatallo y Alecarte (Fatallo) assailing the Decision[2] dated April 30, 2015 of the Court of Appeals, Twenty-Third Division, Cagayan de Oro City (CA), in CA-G.R. CR-HC No. 01034-MIN, which affirmed the Omnibus Decision[3] March 1, 2012 of Regional Trial Court of Butuan City, Branch 4 (RTC) in Criminal Case Nos. 10471 and 10473, finding Fatallo guilty beyond reasonable doubt of violating Sections 5 and 15, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Fatallo was charged for violation of Sections 5 and 15, Article II of R.A. 9165 under the Informations dated March 2, 2004, the accusatory portions of which state:

Criminal Case No. 10471

"That on or about 9:00 o'clock in the evening of March 1, 2004 at T. Calo, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named without authority of law, did then and there willfully, unlawfully and feloniously sell, trade and deliver two (2) sachet of methamphetamine hydrochloride, otherwise known as shabu, weighing zero point zero seven eight eight (0.[0]788) gram, more or less, which is a dangerous drug to a poseur buyer for a consideration of 8 pcs. of one hundred peso bill marked money."

Criminal Case No. 10473

"That on or about 9:00 o'clock in the evening of March 1, 2004 at T. Calo, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above named without authority of law, did then and there willfully, unlawfully and feloniously use a methamphetamine hydrochloride otherwise known as shabu, a dangerous drug and found positive for use, after confirmatory test."[4]

When arraigned, Fatallo pleaded not guilty to the indictment.[5]

Version of the prosecution

To prove the crimes charged, the prosecution presented SPO1 Joselito Fajardo Delos Santos (SPO1 Delos Santos), SPO1 Angelito Estepa Avila (SPO1 Avila), PO2 Pablito Coquilla y Nacorda (PO2 Coquilla) and PSI Virginia Sison Gucor (PSI Gucor), who testified to the following:

On the strength of an information about the drug selling activity of [Fatallo] relayed by the confidential informant to the concerned operatives, Police Inspector Excelso Lawzaga, Jr. formed a buy bust team composed of SPO2 Fulveo Joloyohoy, [SPO1 Delos Santos], [SPO1 Avila], [PO2 Coquilla], PO1 Cultura and

the confidential informant, [who acted as the poseur-buyer].

On March 1, 2004, at around 9:00 o'clock in the evening, the team conducted a buy-bust operation on [Fatallo] at Jean's Store located at T. Calo, Butuan City. Eyewitness SPO[1] Delos Santos testified that as soon as the poseur-buyer arrived at the store of [Fatallo], the latter immediately came out from the store and the two had a conversation. Not long after, [Fatallo] handed something to the poseur-buyer x x x and the latter, in return, got something from his pocket and handed the same to [Fatallo]. SPO[1] Delos Santos admitted that he saw clearly the transaction between [Fatallo] and [the] poseur-buyer because the team was positioned in front of the store, across the street and there was a street lighting near the store. After the exchange of items between [Fatallo] and [the] poseur-buyer, the latter removed his cap to signal the team that the transaction has been consummated already. The poseur-buyer then walked towards the dark area of the premises and disappeared in darkness.

Thereafter, the team headed by Captain Lazaga, Jr. rushed towards [Fatallo] to arrest him. However, [Fatallo] immediately ran towards the upper portion of his house. The team followed him. Upstairs, the team cornered [Fatallo] inside his bedroom and arrested him. The buy-bust team informed [Fatallo] of his constitutional rights. They also asked [Fatallo] to produce the marked eight (8) pieces of one hundred-peso bill (P100.00). [Fatallo] obeyed, got the money from his pocket and gave them to the police officers. When the operatives compared the marked monies taken from the pocket of [Fatallo] to the machine copies they made of the marked monies prior to the operation, the serial numbers of the former tallied with that of the latter.

The buy-bust team then immediately brought [Fatallo] to the team's office for booking and documentation. From the crime scene to the office, SPO2 Joloyohoy got hold of the two (2) sachets of shabu seized from [Fatallo]. In the office, SPO2 Joloyohoy marked the two (2) sachets of shabu with identifying marks A-1 and A-2. The team also prepared four request for laboratory examinations. Afterwards, pictures were taken on [Fatallo] and on the shabu recovered from him. From the office, SPO2 Joloyohoy, accompanied by PO1 Cultura, brought the two (2) sachets of shabu and the written requests to the crime laboratory for examination.[6]

Version of the defense

For his defense, Fatallo denied the charges against him and narrated that:

x x x at around 7:00 o'clock in the evening of March 1, 2004, while [Fatallo] and his live-in partner were sleeping in their room located upstairs in their house at T. Calo Street, Butuan City, he heard someone knocking on the door. When [Fatallo] opened the door, he saw two (2) persons pointing their guns at him. Thereafter, the two (2) persons ordered [Fatallo] to lie down, facing towards the floor. Afterwards, without the presence of any barangay official and without showing any piece of paper or any sort of authority, the operatives frisked x x x him and searched his room for about thirty (30) minutes. The police officers found nothing from [Fatallo]. However, on top of the bed of [Fatallo], the police officers confiscated his wallet containing P4,500.00 to make it as evidence. [Fatallo] protested the confiscation of his wallet but the police officers stepped on his back and told him not to move or complain, or else they will maul him. Thereafter, the police officers brought [Fatallo], his live-in partner, Jing-jing, RR Esguerra and RR's live-in partner, Vanjing Lozada, to their office. RR and Vanjing were the ones allegedly renting a room at [Fatallo's] house. In the office, the operatives showed the alleged marked monies to [Fatallo] but did not show to him any shabu. There were also no barangay officials present in the office.

The foregoing testimony x x x was corroborated by [Fatallo's] sister, Elvie Fatallo Poson.[7]

Ruling of the RTC

In its Omnibus Decision dated March 1, 2012, the RTC found Fatallo guilty beyond reasonable doubt for violations of Sections 5 and 15 of R.A. 9165, the dispositive portion of which reads:

WHEREFORE, premises considered, accused Alvin Fatallo y Alecarte is found guilty beyond reasonable doubt in Criminal Case No. 10471, and is hereby sentenced to suffer the penalty of life imprisonment and pay a fine of Five Hundred Thousand (P500,000.00) Pesos, without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte. He shall be credited in the service of his sentence with his preventive imprisonment conformably with Article 29 of the Revised Penal Code, as amended.

The sachets of shabu are declared forfeited in favor of the government to be dealt in accordance with law.

Likewise, in Criminal Case No. 10473, accused is found guilty for violation of Section 15 of Article II, of Republic Act 9165, is hereby sentenced to undergo drug rehabilitation in any government drug rehabilitation facility.

SO ORDERED.[8]

The RTC found that the prosecution, by testimonial and documentary evidence, successfully proved the elements of the offenses and established the guilt of the accused beyond reasonable doubt. The RTC gave full weight and credit to the prosecution's version of the events, which it found more logical, ordinary and in the course of human experience; as opposed to the accused's narration, which lacks candor and sincerity.[9]

Aggrieved, Fatallo appealed to the CA.[10] In this appeal, Fatallo raised the following grounds: (1) the non-presentation of the poseur buyer as a witness is fatal to the case;[11] (2) the police officers failed to comply with the requirements under Section 21 of R.A. 9165;[12] and (3) the chain of custody of the confiscated drugs was not established.[13]

Ruling of the CA

In the assailed Decision, the CA sustained Fatallo's conviction and held that the prosecution sufficiently discharged its burden of establishing the elements of the crimes charged[14] and proving Fatallo's guilt beyond reasonable doubt.[15] The CA held that the non-presentation of the poseur-buyer as a witness is not fatal to the prosecution's case since the police officers were able to testify positively and categorically that the sale of illegal drugs actually took place.[16] The CA added that what is crucial is that the integrity and evidentiary value of the seized drugs were properly preserved in this case.[17] It ruled that while Section 21, Article II of R.A. 9165 was not strictly complied with by the police officers insofar as the photos, inventory and presence of the witnesses were concerned, the prosecution substantially complied the requirements of the law and sufficiently established the crucial links of the chain of custody. The CA explained that the deviations from the guidelines of R.A. 9165 relate only to minor procedural matters, which by any means, do not operate to tilt the scales of justice in favor of Fatallo.

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and CA erred in convicting Fatallo of the crimes charged.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Fatallo as the prosecution utterly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of R.A. 9165 and for its failure to

establish the unbroken chain of custody of the seized drugs.

The buy-bust team failed to comply
with the mandatory requirements
under Section 21.

Fatallo was charged with the crimes of illegal sale and illegal use of dangerous drugs, defined and penalized under Sections 5 and 15, Article II of R.A. 9165, respectively. To sustain a conviction for illegal sale of dangerous drugs, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[18]

In cases involving dangerous drugs, the confiscated drug constitutes the very corpus delicti of the offense[19] and the fact of its existence is vital to sustain a judgment of conviction.[20] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[21] The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime. Each link to the chain of custody must be accounted for.[22]

This resonates even more in buy-bust operations because "[b]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." [23]

In this connection, Section 21, Article II of R.A. 9165,[24] the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision 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 Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of R.A. 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.[25] This also means that the three (3) required witnesses should already be physically present at the time of apprehension — 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 has enough time to gather and bring with them the said witnesses.

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three (3) required witnesses to be physically present at the time or near the place of apprehension is not dispensed with. The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three (3) witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

Also, while it is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. 9165 does not ipso facto render the seizure and custody over the items void and invalid; the law requires the prosecution to still 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.[26] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[27] without any justifiable explanation, 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.[28]

In the present case, none of the three (3) required witnesses was present at the time of seizure and confiscation and even during, the conduct of the inventory. Based on the narrations of SPO1 Delos Santos[29] and PO2 Coquilla,[30] not one of the required witnesses was present at the time the plastic sachets were allegedly seized from Fatallo or during the inventory of the recovered drugs at the police station.

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*,[31] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*,[32] 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 were evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able 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." [33]

Moreover, it was error for the CA to rule that deviations from the requirements of Section 21 relate only to minor procedural matters which do not affect the guilt of Fatallo. To be sure, case law states that the procedure enshrined in Section 21, Article II of R.A. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[34] For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[35]

The saving clause does not apply to

this case.

As earlier stated, following the IRR of R.A. 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.[36] If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the noncompliance with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause.[37] 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 there after justify or explain the same.[38]

In the present case, prosecution neither recognized, much less tried to justify or explain, the police officers' deviation from the procedure contained in Section 21. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the corpus delicti had been compromised.[39] As the Court explained in *People v. Reyes*:[40]

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 x[41] (Emphasis supplied)

Moreover, contrary to the findings of the RTC and CA, the prosecution failed to establish the unbroken chain of custody of the seized drugs. The records reveal that gaps exist in the chain of custody of the seized items which create reasonable doubt on the identity and integrity thereof.

In *People v. Dahil*,[42] this Court explained that the starting point of the custodial link is the marking of the seized drug immediately after seizure. This is vital because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence. Hence, while marking is not explicitly found in the law (but such is indispensable for the required inventory to be credible), this Court had consistently stressed that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.[43]

Notably, in this case, the two (2) plastic sachets were allegedly bought by the confidential informant from Fatallo, but the markings were made not in the place of seizure and not by the person who recovered the drugs from Fatallo.

Moreover, this Court has consistently ruled that to establish an unbroken chain of custody, "[i]t is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain." [44] This requirement was, however, not complied in this case.

The Court understands that confidentiality protects the informant, who acted as the poseur-buyer, from testifying

in court; nevertheless, SPO2 Fulveo Barillo Joloyohoy (SPO2 Joloyohoy), the police officer who supposedly received the confiscated drugs from the poseur-buyer and delivered the same to the police station for marking and inventory, was never presented in court.

While SPO1 Delos Santos positively and categorically stated he saw the exchange of items between Fatallo and the poseur-buyer, he never saw the poseur-buyer hand over the seized items to SPO2 Joloyohoy. In fact, SPO1 Delos Santos merely presumed that the illegal drugs bought by the poseur-buyer were the ones delivered by SPO2 Joloyohoy to the police station:

Q

Mr. Witness, going back to the time when your poseur-buyer left the place after the buy-bust operation was consummated, where did he go and how many sachets of shabu was he able to buy?

A

Our poseur-buyer walked away going towards the dark part and disappeared in the darkness. And I only came to know that there were two sachets that was bought by our poseur-buyer when Joloyohoy went after us upstairs, because it was Joloyohoy who was tasked to get the shabu from the poseur-buyer.[45]

Verily, without the testimony of SPO2 Joloyohoy, there is doubt on whether the drugs supposedly bought from Fatallo were the very same drugs marked, inventoried, delivered to the laboratory for examination and presented in court as evidence. There is no evidence on record on how the confiscated drugs passed from the confidential informant to SPO2 Joloyohoy, and how the integrity of said items were preserved while they remained in the latter's custody until they were turned over to the police station for marking and inventory.

Furthermore, while SPO1 Delos Santos claimed that it was SPO2 Joloyohoy who delivered the plastic sachets to the crime laboratory for examination, the dorsal portion of Request for Laboratory Examination,[46] showed that the seized drugs were received from a certain PO1 Monton, JRU, by PSI Gucor, the forensic chemist who conducted the examination. This creates doubt as to who actually delivered the drugs from the police station to the crime laboratory. More, importantly, the records are again bereft of any evidence as to how the seized items were passed on and placed in the hands of PO 1 Monton and/or SPO2 Joloyohoy, or how the integrity of said items was preserved while they remained in their custody.

Nothing can also be gained from the testimony of the forensic chemist PSI Gucor. She never identified in court the police officer from whom she received the seized items for examination. Her testimony also lacked details on how the specimens were handled from the time they were submitted for laboratory examination up to time they were formally offered to the court. PSI Gucor's narrations were limited to the results of the examination she conducted on the seized items and the urine sample taken from Fatallo.[47]

It is clear from the foregoing that no intact or unbroken chain of custody was established by the prosecution. The identity and integrity of the seized drugs were compromised. Consequently, Fatallo must perforce be acquitted.

The presumption of innocence of the accused vis-à-vis 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.[48] 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.[49]

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. In *People v. Enriquez*,[50] the Court held:

xxx [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the non-compliance is an irregularity, a red flag, that casts reasonable doubt on the identity of the corpus delicti.[51] (Emphasis supplied)

The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[52] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[53] Trial courts have been directed by the Court to apply this differentiation.[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 R.A. 9165.

Indeed, what further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the conduct of buy-bust operations required the following:[55]

CHAPTER V

x x x x

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

V. SPECIFIC RULES

x x x x

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

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

- a. Record time of jump-off in unit's logbook;
- b. Alertness and security shall at all times be observed;
- c. Actual and timely coordination with the nearest PNP territorial units must be made;
- d. Area security and dragnet or pursuit operation must be provided;
- e. Use of necessary and reasonable force only in case of suspect's resistance;
- f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
- g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
- h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which

maybe concealed in his body, vehicle or in a place within arms reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;

l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

m. The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;

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

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

The Court has ruled in *People v. Zheng Bai Hui*[56] 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 and Section 21.

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 drugs. In other words, the prosecution was not able to overcome the presumption of innocence of Fatallo.

With the acquittal of Fatallo in relation to the charge of violation of Section 5, R.A. 9165, it follows then that he should likewise be acquitted as to the charge of violation of Section 15, R.A. 9165.

The case for violation of Section 15, R.A. 9165 was filed because Fatallo tested positive for use of methamphetamine hydrochloride after he was subjected to a drug test following his arrest. This was done in compliance with Section 38, R.A. 9165, which states:

SEC. 38. Laboratory Examination or Test on Apprehended/Arrested Offenders.— Subject to Section 15 of this Act, any person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. If found to be positive, the results of the screening laboratory examination or test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry equipment or some such modern and accepted method, if confirmed the same shall be prima facie evidence that such person has used dangerous drugs, which is without prejudice for the prosecution for other violations of the provisions of this Act: Provided, That a positive screening laboratory test must be confirmed for it to be valid in a court of law. (Emphasis and underscoring supplied)

Thus, Fatallo was subjected to a drug test as a result of his apprehension which, as already explained, was conducted in violation of Section 21, R.A. 9165. Section 21, R.A. 9165 is a statutory exclusionary rule of evidence, bearing in mind that, under the Rules of Court, "evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules." [57]

The results of the drug test cannot therefore be used against Fatallo for they are considered, under the law, as the "fruit of the poisonous tree." In the case of *People v. Alicando*, [58] it was explained thus:

x x x. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. [59] (Emphasis, italics and underscoring supplied)

Applied in the present case, since the apprehension of Fatallo by the police officers was illegal for non-compliance with the procedure provided by Section 21, R.A. 9165, it therefore follows that the drug test conducted on him was likewise illegal for it is an indirect result of his arrest. Otherwise stated, if the Fatallo was not arrested in the first place, he would not have been subjected to a drug test because Section 38 refers to "any person apprehended or arrested for violating the provisions of this Act," [60] As the Fatallo was not proved to have violated any of the provisions of R.A. 9165, then the drug test conducted on him has no leg to stand on. Fatallo's acquittal for the charge of violating Section 15, R.A. 9165 must necessarily follow.

As a final note, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of R.A. 9165, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the corpus delicti. The procedure outlined in Section 21 is, to the Court's mind, 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. [61]

WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated April 30, 2015 of the Court of Appeals, Twenty-Third Division, Cagayan de Oro City, in CA-G.R. CR-HC No. 01034-MIN is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Alvin Fatallo y Alecarte a.k.a. Alvin Patallo y Alecarte 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 sent to the Superintendent, Davao Prison and Penal Farm, 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.

Carpio (Chairperson), Perlas-Bernabe, and A. Reyes, Jr., JJ., concur.
J. Reyes, Jr.,[*] J., on wellness leave.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018. On wellness leave.

[1] See Notice of Appeal dated May 13, 2015, rollo, pp. 15-16.

[2] Rollo, pp. 3-14. Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos, concurring.

[3] CA rollo, pp. 45-68. Penned by Judge Godofredo B. Abul, Jr.

[4] Rollo, p. 4.

[5] Id.

[6] Id. at 5-6.

[7] Id. at 6-7.

[8] CA rollo, p. 68.

[9] Rollo, p. 13.

[10] Records, pp. 216-217.

[11] CA rollo, pp. 32-36.

[12] Id. at 36-39.

[13] Id. at 39-43.

[14] Rollo, p. 9.

[15] Id.

[16] Id.

[17] Id. at 10.

[18] *People v. Opiana*, 750 Phil. 140, 147 (2015).

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

[20] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[21] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

[22] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[23] *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544.

[24] The said section provides:

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[.]

[25] IRR of R.A. 9165, Art. II, Sec. 21 (a).

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

[27] *People v. Almorfe*, 631 Phil. 51, 60 (2010); *People v. Alvaro*, supra note 21, at 7; *People v. Villanueva*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Sagaunit*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6.

[28] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

[29] See TSN, October 5, 2006, pp. 1-30.

[30] See TSN, January 29, 2009, pp. 1 -22.

[31] G.R. No. 228890, April 18, 2018.

[32] 736 Phil. 749 (2014).

[33] *People v. Tomawis*, supra note 31, at 11-12.

[34] See *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[35] *Id.* at 1039.

[36] R.A. 9165, as amended by R.A. 10640, Sec. 21(1).

[37] *People v. Beran*, 724 Phil. 788, 822 (2014).

[38] *People v. Reyes*, 797 Phil. 671, 690 (2016).

[39] See *People v. Sumili*, 753 Phil. 342, 352 (2015).

[40] Supra note 38.

[41] *Id.* at 690.

[42] 750 Phil. 212 (2015).

[43] *Id.*; emphasis and underscoring supplied.

[44] *People v. Gajo*, G.R. No. 217026, January 22, 2018, p. 8.

[45] TSN, October 5, 2006, p. 12.

[46] Exhibit "F," index of exhibits, p. 9.

[47] See TSN, August 3, 2007, pp. 1 -15.

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

[49] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[50] 718 Phil. 352 (2013)

[51] *Id.* at 366; emphasis supplied.

[52] *People v. Mendoza*, *supra* note 32, at 770.

[53] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[54] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 20.

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

[56] 393 Phil. 68, 133 (2000).

[57] RULES OF COURT, Rule 128, Sec. 3.

[58] 321 Phil. 656 (1995).

[59] *Id.* at 690.

[60] Emphasis and underscoring supplied.

[61] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

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