

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICHAE L LUNA Y TORSILINO, ACCUSED-APPELLANT.

G.R. No. 219164. March 21, 2018

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CAGUIOA, J:

"x x x And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!"

- Robert Bolt, *A Man for All Seasons*[1]

The Case

Before the Court is an appeal[2] under Section 13(c), Rule 124 of the Rules of Court from the Decision[3] dated June 13, 2014 (CA Decision) of the Court of Appeals, Special Tenth (10[th]) Division (CA) in CA-G.R. CR-HC No. 05336. The CA Decision affirmed the Joint Decision[4] dated December 8, 2010 rendered by the Regional Trial Court of Marikina City, Branch 168 (RTC), in Criminal Cases Nos. 2008-3529-D-MK and 2008-3530-D-MK,[5] which found herein accused-appellant Richael T. Luna (accused-appellant Luna) guilty of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The present appeal stems from two (2) Informations[7] filed before the RTC, separately charging accused-appellant Luna with the crimes of illegal sale and possession of dangerous drugs, as defined under Sections 5[8] and 11,[9] Article II of RA 9165, respectively. The accusatory portions of the Informations read:

Criminal Case No. 2008-3529-D-MK

That on April 14, 2008, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell to SPO1 Ramiel Soriano, posing as a buyer, a small plastic sachet containing 0.03 gram of white crystalline substance valued at Php. 300.00 which gave positive result to the tests for the presence of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above cited law.

CONTRARY TO LAW.[10]

Criminal Case No. 2008-3530-D-MK

That on or about the 14[th] day of April 2008, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and feloniously have in her (sic) possession, direct custody and control one (1) plastic sachets (sic) containing 0.01 gram of white crystalline substance which gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of

the above-cited law.

CONTRARY TO LAW.[11]

When arraigned on September 17, 2008, accused-appellant Luna entered a plea of "not guilty" for both offenses charged.[12] Pre-trial was then held and terminated on October 8, 2008.[13] Trial thereafter ensued.

The prosecution presented three (3) witnesses, namely: (i) Senior Police Officer 1 (SPO1) Ramiel Soriano (SPO1 Soriano), (ii) SPO1 Jose Castelo (SPO1 Castelo), and (iii) Police Chief Inspector (PCI) Lourdeliza Cejes (PCI Cejes). The defense, on the other hand, presented two (2) witnesses: (i) accused-appellant Luna himself, and (ii) Bemardita Banico (Banico), the mother of accused-appellant Luna's common-law spouse.

As gathered from the records, the pertinent facts follow.

The prosecution alleged that on April 14, 2008, a buy-bust operation was organized by the Marikina City Police Station based on a tip from a confidential informant (CI), implicating accused-appellant Luna for suspected drug-related activities.[14] A team was then formed to conduct the said operation and SPO1 Soriano was designated as the poseur-buyer.[15] SPO1 Soriano was given three (3) pieces of One Hundred Peso (P100.00) bills[16] that were marked with his initials, "RS." [17] The team was headed by SPO1 Castelo.[18]

After coordinating with the Philippine Drug Enforcement Agency (PDEA), the buy-bust team, together with the CI, proceeded to accused-appellant Luna's residence at Barangay Tumana, Marikina.[19] Upon arrival thereat, SPO1 Soriano and the CI walked toward the direction of accused-appellant Luna's house and saw a man standing outside, who was then identified by the CI to be accused-appellant Luna.[20] Accused-appellant Luna then approached both of them and told the CI, "pare, score na kayo, mayroon pa ako dito." [21] At that point, the CI introduced SPO1 Soriano to accused-appellant Luna as an interested buyer.[22] When asked how much worth of shabu he would like to buy, SPO1 Soriano answered "tres lang brod," while handing accused-appellant Luna the three (3) marked bills.[23] In turn, accused-appellant Luna retrieved from his front pocket two (2) sealed plastic sachets containing suspected shabu, but handed only one (1) piece to SPO1 Soriano.[24] Accused-appellant Luna then returned the other sachet in his pocket.[25]

After the exchange, SPO1 Soriano checked the contents of the sachet using a flashlight, which was then the pre-arranged signal to the buy-bust team.[26] Immediately after, the other members of the buy-bust team approached accused-appellant Luna and arrested him after introducing themselves as police officers.[27] SPO1 Soriano then retrieved the marked bills from accused-appellant Luna and also confiscated the other sachet that the latter placed in his front pocket.[28] Thereafter, SPO1 Soriano marked the two (2) sachets and accomplished an Inventory of Confiscated Evidence[29] in the presence of accused-appellant Luna at the place of his arrest.[30] The Inventory of Confiscated Evidence was subsequently signed by Barangay Kagawad Oscar Frank Rabe at the Barangay Hall, while a certain Danny Placides, a representative from the media, signed the same at the police station.[31] Likewise, at the police station, accused-appellant Luna was photographed holding the plastic sachets supposedly recovered from his person.[32]

On the same day, SPO1 Soriano requested for a laboratory examination of the items seized from accused-appellant Luna with the Crime Laboratory of the Eastern Police District.[33] The request was personally received by PCI Cejes, who then conducted a qualitative examination of the contents of the plastic sachets.[34] The contents later tested positive for methamphetamine hydrochloride or shabu, a dangerous drug.[35]

For his defense, accused-appellant Luna denied all charges against him. He claimed that in the afternoon of April 14, 2008, while he was at his home watching television with his two (2) sons, aged four (4) and three (3) years old, respectively, two (2) men in civilian clothes suddenly barged into his house and introduced themselves as

police officers.[36] One of them asked if he was "Bunso," to which he answered in the affirmative.[37] Meanwhile, the other police officer went inside his room and stayed there for about ten (10) minutes.[38] Later, three (3) more men entered his home who then brought him out of the house.[39] Accused-appellant Luna was then made to board a car and was brought to the police headquarters.[40]

Upon their arrival, one of the police officers, whom accused-appellant Luna identified as SPO1 Soriano, placed three (3) One Hundred Peso (P100.00) bills in front of accused-appellant Luna together with two (2) plastic sachets.[41] He was then ordered to hold the plastic sachets and was photographed by the police officers while doing so.[42]

Banico, on the other hand, testified that in the afternoon of April 14, 2008, she was resting outside her house at Pipino Street, Barangay Tumana, the same street where the house of accused-appellant Luna was located.[43] From her house, she then saw a person on board a motorcycle passing by the residence of accused-appellant Luna, which was tailed by a car boarded by several men.[44] The rider of the motorcycle then asked her where was the residence of a certain "Bunso." [45] Thereafter, the men in the car entered the house of accused-appellant Luna and began searching around the place.[46] Banico also entered the house when she heard the children crying.[47] Upon entering, she was asked by one of the men, "Mrs, nasaan ang basura?," but she did not understand what they were referring to.[48] After about half an hour, when the men were not able to find anything, they went out of the house together with accused-appellant Luna, who was then made to board their car.[49] Banico later learned that accused-appellant Luna was brought to the office of the Station Anti-Illegal Drugs Special Operation Task Force.[50]

Ruling of the RTC

In the Joint Decision dated December 8, 2010, the RTC found accused-appellant Luna guilty of both offenses charged, as follows:

WHEREFORE, finding the accused RICHAEAL LUNA y TORSILINO @ BUNSO guilty beyond reasonable doubt, he is hereby sentenced to suffer the following: (1) In Criminal Case No. 2008-3529-D to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) and, (2) In Criminal Case No. 2008-3530-D accused is hereby sentenced to suffer x x x an indeterminate prison term ranging from twelve (12) years, as minimum, to seventeen (17) years as maximum and to pay a fine of P300,000.00[.]

Accused is credited in full of the preventive imprisonment he has already served in confinement.

The dangerous drug submitted as evidence in this case is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.[51]

The RTC found that the prosecution was able to establish the elements necessary for the separate crimes of illegal sale and possession of dangerous drugs.[52] It was held that accused-appellant Luna's defense of denial could not prevail over the positive allegations of the police officers, who were presumed to be in the regular performance of their official duties.[53] Further, while there was an admitted non-compliance by the officers with the procedure under Section 21 of RA 9165, i.e., the presence of the required witnesses after seizure, the RTC nevertheless held that the integrity and evidentiary value of the items seized were preserved.[54] Accused-appellant Luna filed a Motion for Reconsideration[55] dated December 17, 2010, which was denied by the RTC in an Order[56] dated May 10, 2011.

Aggrieved, accused-appellant Luna elevated his case to the CA via Notice of Appeal.[57]

Ruling of the CA

In the CA Decision, the CA agreed with the RTC's finding that the integrity and evidentiary value of the corpus delicti were properly preserved by the police officers.[58] The CA explained that the prosecution's evidence was able to establish an uninterrupted chain of custody from the time the drugs were allegedly seized from accused-appellant Luna until the time it was offered in evidence during trial.[59] The dispositive portion of the CA Decision stated, thus:

WHEREFORE, premises considered, the APPEAL is hereby DENIED. Accordingly, the Joint Decision of the Regional Trial Court, Branch 168, Marikina on December 8, 2010, which pronounced accused--appellant's guilt beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, is hereby AFFIRMED.

SO ORDERED.[60]

Hence, this appeal.

In the main, accused-appellant Luna anchors his defense on the failure of the police officers to comply with the procedure under Section 21 of RA 9165, which he argues is mandatory.[61] He argues, among other things, that the government official (Kagawad Oscar Frank Rabe) and media representative (Danny Placides) - both of whom are required witnesses under the law - were not present immediately after seizure and confiscation of the dangerous drugs.[62]

Issue

The principal issue for resolution is whether accused-appellant Luna is guilty beyond reasonable doubt for the crime of violation of Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is granted.

The merits of the case are straightforward. In this regard, before disposing of the substantive issues, the Court finds it proper to first review the current literature on Section 21 of RA 9165.

Section 21, Article II of RA 9165, re-examined.

The legality of entrapment operations involving illegal drugs begins and ends with Section 21,[63] Article II of RA 9165. Under the law, the following procedure must be observed in the seizure, custody, and disposition of dangerous drugs and related paraphernalia:

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[.] (Emphasis supplied; italics in the original)

Meanwhile, the Implementing Rules and Regulations of RA 9165 (IRR) supplied details as to the place where the physical inventory and photographing of the seized items should be done, i.e., at the place of seizure, at the nearest police station, or at the nearest office of the apprehending officer or team. Further, a "saving clause" was added in case of non-compliance with the requirements under justifiable grounds. Section 21(a), Article II of the IRR, thus states:

SECTION 21. x x x

(a)

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

In sum, the law puts in place requirements of time, witnesses and proof of inventory with respect to the custody of seized dangerous drugs, to wit:

- The initial custody requirements must be done immediately after seizure or confiscation;
- The physical inventory and photographing must be done in the presence of:
 - The accused or his representative or counsel;
 - The required witnesses:
 - a representative from the media and the Department of Justice (DOJ), and any elected public official for offenses committed during the effectivity of RA 9165 and prior to its amendment by RA 10640, as in this case;
 - an elected public official and a representative of the National Prosecution Service of the DOJ or the media for offenses committed during the effectivity of RA 10640.

As a rule, strict compliance with the foregoing requirements is mandatory.[64] However, following the IRR of RA 9165, the courts may allow a deviation from these requirements if the following requisites are availing: (1) the existence of "justifiable grounds" allowing 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.[65] If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; ergo, the integrity of the corpus delicti remains untarnished. The Court's disquisition in *People v. Reyes*[66] is particularly illuminating:

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 noncompliance 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[67] (Emphasis supplied; citations omitted)

Following a plain reading of the law, it is now settled that non-compliance with the mandatory procedure in Section 21 triggers the operation of the saving clause enshrined in the IRR of RA 9165. Verba legis non est recedendum from the words of a statute there should be no departure. Stated otherwise, in order not to render void and invalid the seizure and custody over the evidence obtained, the prosecution must, as a matter of law, establish that such non-compliance was based on justifiable grounds and that the integrity and the evidentiary value of the seized items were preserved.[68] Hence, before the prosecution can rely on this saving mechanism, they (the apprehending team) must first recognize lapses, and, if any are found to exist, they must justify the same accordingly.[69]

Now to this case.

The police officers failed to comply with the mandatory requirements under Section 21 of RA 9165

After a judicious scrutiny of the records of this case, the Court finds that the police officers reneged on their duty to comply with the requirements on the seizure, initial custody, and handling of the seized items pursuant to Section 21. Such lapses, to the mind of the Court, cast serious doubt on the identity and integrity of the corpus delicti and, consequently, reasonable doubt on the guilt of accused-appellant Luna.

On the three-witness requirement

To recall, the language of the first paragraph of Section 21 is clear: the apprehending team is duty-bound to conduct a physical inventory of the seized items and photograph the same "immediately after seizure and confiscation x x x in the presence of the accused x x x, a representative from the media and the [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof." [70]

The plain import of the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be performed immediately at the place of apprehension.[71] And, in case this is not practicable, then the inventory and photographing may be done as soon as the apprehending team reaches the nearest police station or office of the apprehending officer/team. Necessarily, this could only mean that the three (3) 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 buy-bust operations, by their very nature, entail meticulous planning and coordination.

In other words, in case of warrantless seizures, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," this does not dispense with the requirement of having the DOJ or media representative and an elected public official to be physically present at the time of apprehension.

The reason for this is dictated by simple logic: these witnesses are presumed to be disinterested third parties insofar as the buy-bust operation is concerned. Hence, it is at the time of arrest - or at the time of the drugs' "seizure and confiscation" - that the insulating presence of the witnesses is most needed, as it is their presence at the time of seizure and confiscation that would foreclose the pernicious practice of planting of evidence. Without the actual presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the confiscated drugs, the evils of switching, planting or contamination of the corpus delicti that had tainted the buy-busts conducted under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected.[72]

Transposing the foregoing to this case, based on the narrative of the prosecution, none of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly recovered from accused- appellant Luna. Neither were they present during the preparation of the inventory at the place of seizure, i.e., the residence of accused-appellant Luna. As categorically admitted by SPO1 Soriano, Barangay Kagawad Oscar Frank Rabe was only present at the Barangay Hall where he was made to sign the Inventory of Confiscated Evidence.[73] In the same manner, Danny Placides, the purported media representative, only signed the inventory at the police station.[74]

During his direct examination, SPO1 Soriano testified as follows:

PROSECUTOR SUBONG:

x x x x

Q

Where exactly did you prepare the Inventory of Confiscated Evidence?

A

At the crime scene, sir.

x x x x

Q

On this Inventory of [C]onfiscated Evidence marked as Exhibit "H", there is a note which states "Arrested person refused to sign" why did you put this note on this document?

A

To show that he does not want to sign on that document, sir.

Q

Who are you referring to as the one who refused to sign this document?

A

Rich[a]el Luna, sir.

Q

[T]here is a [signature] atop the name Oscar Frank Rabe, Brgy. Kagawad, where did Kagawad Rabe sign this document?

A

At the Barangay Hall, sir.

Q

How about Danny Pla[c]ides, who is the representative of the Media?

A

Here, sir, in our office.[75] (Emphasis supplied)

Again, during his cross-examination, SPO1 Soriano confirmed the fact that none of the required witnesses was

present at the time of the seizure and during the preparation of the inventory and neither were they furnished a copy of the same, as categorically required by Section 21:

Q:

So the only person present at that time you effected the arrest and at the time that you confiscated this shabu from his pocket were you, the accused, PO3 Daño and PO2 Anos?

A:

Yes, sir.

Q:

So there are only four of you?

A:

Yes, sir.

Q:

Did you turn over any of the pieces of evidence to any of these other police officers?

A:

No, sir.

x x x x

Q:

Now, where was the accused, Mr. Witness, when the certificate of inventory was being filled up?

A:

He was in front of me when I filled up the certificate of inventory, sir.

Q:

The only copy of this certificate of inventory, you turned it over to the Office of the City Prosecutor, is this correct?

A:

Yes, sir.

Q:

There was no copy handed to the accused, is this correct?

A:

None, sir.

Q:

As well as the barangay and media?

A:

Yes, sir.

Q:

Now, you testified earlier that the only person present at the time you arrested the accused and at the time you confiscated the pieces of evidence were you, the accused and PO3 Daño and PO2 Anos, is this correct?

A:

Yes, sir.

Q:

So the barangay and media representative were not present at that time, correct?

A:

Yes, sir.[76] (Emphasis supplied)

The fact that only the police officers were present during the apprehension of accused-appellant Luna is enough to raise concern. In such an environment, police impunity becomes inherent. To state the obvious, assuming arguendo that there was indeed evidence planted, it would be virtually impossible for accused-appellant Luna - or any accused placed in a similar plight - to overcome the oft-favored testimony of police officers through mere denial. This is further aggravated by the known fact that entrapment procedures are inevitably shrouded with secrecy and cunningness to ensure the success of the operation.[77]

To recapitulate, the presence of the three (3) insulating witnesses must be secured and complied with at the time of the warrantless arrest, such that they are required to be at or at least near the intended place of the arrest, and accordingly be ready to witness the inventory and photographing of the seized items "immediately after seizure and confiscation." This is the necessary interpretation of Section 21 if the purpose of the law, which is to insulate the accused from abuse, is to be achieved.

On the photography requirement

In the same vein, the police officers also failed to photograph the seized drugs immediately after and at the place of seizure, as required under Section 21. Instead, it was only at the police station that accused-appellant Luna was photographed while holding the plastic sachets supposedly recovered from his person.[78] SPO1 Soriano testified, thus:

Q:

Did you turn over any of the pieces of evidence to any of these other police officers?

A:

No, sir.

Q:

Now, there is a photograph here of the accused holding an alleged suspected plastic sachet. Suspected to contain illegal drug, Mr. Witness. Was this taken at the police station?

A:

Yes, sir.

Q:

Now, did you instruct him to hold this plastic sachet with markings in order for him to be photographed with this specimen?

A:

Yes, sir.

x x x x

Q:

Now, you testified earlier that the only person present at the time you arrested the accused and at the time you confiscated pieces of evidence were you, the accused and PO3 Daño and PO2 Anos, is this correct?

A:

Yes, sir.

Q:

So the barangay and media representative were not present at that time, correct?

A:

Yes, sir.[79] (Emphasis supplied)

Significantly, in the Coordination Form[80] dated April 14, 2008 prepared by the buy-bust team ahead of the operation, a "camera" was among the listed "special equipment" that were to be used in the operation.[81] Hence, considering that the buy-bust team was able to accomplish the Inventory of Confiscated Evidence at the place of seizure (albeit there was belated participation of the required witnesses), there was no compelling reason for them to defer the photographing requirement until their return to the police station. Neither was it apparent from the records that the photograph of accused-appellant Luna holding the plastic sachets was taken in the presence of the witnesses, as mandated by Section 21.

The prosecution failed to successfully trigger the saving clause under the IRR of RA 9165

All told, given the demonstrable failure of the police officers to faithfully observe the mandatory requirements in Section 21, the question now is whether the saving clause under the IRR of RA 9165 was triggered. For this purpose, the prosecution must satisfy the two-pronged requirement: first, present justifiable grounds for the non-compliance, and second, show that the integrity and evidentiary value of the seized item were properly preserved.[82]

Based on the circumstances of the present appeal, however, the saving clause was not triggered because the first prong was not satisfied - the prosecution did not offer any justifiable grounds for the non-compliance. No explanation was proffered as to why none of the insulating witnesses was present at the place and time of the seizure, or as to the failure to photograph the drugs immediately after seizure in the presence of such witnesses. There was likewise no showing of any efforts exerted by the police officers to at least coordinate with witnesses ahead of the buy-bust operation. In fact, only two (2) out of the three (3) required witnesses under Section 21 were eventually summoned to affix their signature on the pre-accomplished Inventory of Confiscated Evidence. Likewise, as already mentioned above, there was no apparent reason to defer the photographing of the corpus delicti immediately after seizure because the buy-bust team was able to perform an inventory at the scene.

Even in the Sinumpaang Salaysay[83] of SPO1 Soriano, there was no attempt whatsoever to place on record the reasons for the non-compliance with the procedure in Section 21:

Na, aking nilagyan ng markang "RTL-RS BUYBUST" 04/14/08 ang aking nabiling isang pirasong transparent plastic sachet na may larnang pinaghihinalaang shabu.

Na, akin ding nilagyan ng markang "RTL-RS POSS" 04/14/08 ang aking nakumpiska sa kanyang pag-iingat na isang pirasong transparent plastic sachet na may larnang pinaghihinalaang shabu.

Na, ako ay gumawa ng inventory of confiscated evidence at akin itong pinirmahan at hindi lumagda ang taong suspetsado at pinirmahan ng Brgy.[.] Official ng Brgy. Tumana, Lungsod ng Marikina sa katauhan ni Brgy. Kagawad Oscar Frank Rabe at representante ng Media nasi Danny Placides ng Saksi/Bomba.

Na, aking kinuhanan ng litrato ang nasabing ebedensiya habang hawak ng taong suspetsado[.]

Na, ang taong suspetsado ay arning dinala sa tanggapan ng EPD Crime Lab para ipadrug test, at kasarna ang ebedensiya na nakumpiska sa kaniya para sa isang laboratory examination at amin siyang pinagsakdal sa paglabag sa RA 9165 Article 2 Section 5 (SELLING) at Section 11 (POSSESSION).[84]

In this regard, considering that the first prong of the saving clause was not complied with, any and all evidence tending to establish the chain of custody of the seized drugs become immaterial. Given the fact that patent irregularities were already present at the point of seizure - the supposed "first link" in the chain - there is no more practical value to establishing an unbroken chain of custody to show that the integrity and the evidentiary value of the seized items were properly preserved.

To demonstrate, if the movement of the seized items was to be recorded beginning only from SPO1 Soriano, the poseur-buyer, presenting a continuous chain until the items are produced in court does nothing to ensure that no foul play or planting was involved at the point of contact with accused-appellant Luna. In other words, if there is already non-compliance with Section 21 of RA 9165 and no justifiable grounds are presented therefor, proving a chain of custody beginning only with the poseur-buyer is pointless because the planting of evidence is naturally done at the point of seizure. Once more, the entire rationale of placing witnesses at the scene and conducting an inventory and photographing in their presence immediately after seizure of the dangerous drugs is to guarantee with moral certainty that the items were indeed recovered from the accused and not planted by the police officers.

Prescinding from the foregoing, the Court finds that the prosecution utterly failed to discharge its duty to acknowledge and explain the reasons for the lapses in the procedure laid down by the law. Accordingly, without the successful triggering of the saving clause, the seizure and custody over the dangerous drugs in this case must perforce be invalidated.

The presumption of innocence vis-a-vis the presumption of regularity

The Court takes this opportunity to stress an important point.

The cornerstone of all criminal prosecutions is the right of the accused to be presumed innocent.[85] By this presumption, the Constitution places the onus probandi on the prosecution to prove the guilt of the accused on the strength of its own evidence, not on the weakness of the defense.[86] Hence, the accused need not offer evidence on his behalf and may rely on the presumption entirely, should the prosecution fail to overcome its burden of proof.[87]

In this respect, the presumption of innocence is overturned if and only if the prosecution has successfully discharged its duty, that is, proving the guilt of the accused beyond reasonable doubt[88] - to prove 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.[89] To be sure, the concept of moral certainty is subjective. What remains certain, however, is that the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains reasonable doubt as to his guilt.[90]

The RTC, in its Joint Decision dated December 8, 2010, which was affirmed by the CA, convicted accused-appellant Luna based on his purported failure to prove that the police officers did not perform their duties regularly, notwithstanding the established lapses in procedure:

Accused insists that there was no buy-bust operation and that the shabu allegedly sold by him to the poseur buyer was planted evidence. His defense of denial cannot prevail over the positive allegation of prosecution witness SPO1 Ramiel Soriano. He did not present evidence that the prosecution witnesses had motive to falsely charge him. Neither did accused prove that the police officers did not perform their duties regularly. x x x The Supreme Court has repeatedly ruled that a positive testimony has more weight and credit in law than the bare denials of an accused especially if no motive was attributed to the witness for testifying unfavorably. The police officers went to the area for the simple purpose of performing the task assigned by their superior to apprehend herein accused for his illegal activity. As public officers, they were presumed to be in the performance of their duties. Where there is no evidence to the contrary, law enforcers' narration of the incident is worthy of belief and as such, they are presumed to have performed their duties in the regular manner x x x. It is an established rule that the testimonies of the police officers are entitled to full faith and credit. They are presumed to be in the regular performance of official duties x x x.[91] (Emphasis supplied; citations omitted)

This is grievous error. The RTC's reliance on the presumption of regularity in the performance of official duty is misplaced considering that there was affirmative proof of irregularity in the records.[92] To say the least, the admitted failure of the police officers to comply with the requirements in Section 21 effectively neutralized the presumption relied upon; there was no basis in fact and law to rely on the same. This Court, in *People v. Catalan*,^[93] had already warned the lower courts against this pitfall:

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[94] (Emphasis supplied; italics in the original)

In this case, the non-compliance with Section 21 without the triggering of the saving clause is a showing of irregularity that effectively rebuts the presumption. As previously ruled in *People v. Enriquez*,^[95] any divergence from the prescribed procedure, when left unjustified, is "an irregularity, a red flag, that casts reasonable doubt on the identity of the corpus delicti."^[96]

Verily, the presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.[97] Applied to dangerous drugs

cases, the prosecution cannot rely on the presumption when there is a showing that the apprehending officers failed to comply with the requirements laid down in Section 21. And, in any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.[98] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[99]

Conclusion

All things considered, the evidence, appreciated in its totality, unequivocally points to an acquittal. Firstly, there were patent breaches of the mandatory requirements of Section 21 of RA 9165. Secondly, the prosecution utterly failed to trigger the saving clause as they did not present justifiable grounds for such non-compliance. Case law has decreed that the procedure enshrined in Section 21 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.[100] This being so, considering that the State left the lapses of the police officers unacknowledged and unexplained, the integrity and evidentiary value of the corpus delicti had been compromised, thereby creating reasonable doubt as to the guilt of accused-appellant Luna for the crimes charged. Hence, his acquittal must follow without delay.

A final note.

The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws - in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty does go unpunished, then that is on the police and the prosecution - that is for them to explain to the People.

WHEREFORE, premises considered, the Decision dated June 13, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05336 is REVERSED and SET ASIDE. Accused-appellant Richael Luna y Torsilino is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

Carpio,[*] Acting C. J., (Chairperson), Peralta, Perlas-Bernabe, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] "A Man for All Seasons Quotes," <<https://www.goodreads.com/work/quotes/1358325-a-man-for-all-seasons>>, last accessed on March 19, 2018; see "A Man For All Seasons Script - Dialogue Transcript," transcript from the screenplay and/or the Paul Scofield as Thomas More movie, <http://www.script-o-rama.com/movie_scripts/m/man-for-all-seasons-script.html>, last accessed on March 19, 2018.

[2] Rollo, pp. 16-18.

[3] Id. at 2-15. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ramon R. Garcia and

Pedro B. Corales concurring.

[4] CA rollo, pp. 11-24. Penned by Presiding Judge Lorna F. Catris-Chua Cheng.

[5] Also referred to as Crim. Cases Nos. 08-3529-30-D-MK in some parts of the records.

[6] 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).

[7] Records, pp. 1, 28.

[8] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[9] SEC. 11. Possession of Dangerous Drugs. - x x x

x x x x

x x x if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[10] Records, p. 1.

[11] Id. at 28.

[12] CA Rollo, p. 12.

[13] Id.

[14] Rollo, p. 3.

[15] Id.

[16] Bearing serial numbers BP966509, PV642138, and WE463138 (records, p. 12). In the Pre-Operational Report and Coordination Form, both dated April 14, 2008, one (1) Five Hundred Peso (P500.00) bill bearing serial number EL476637 was also issued to be used as buy-bust money (records, pp. 9-10). The said bill was never accounted for during trial nor was any explanation given by the witnesses for its non-use in the buy-bust operation.

[17] Rollo, p. 3.

- [18] CA Rollo, p. 16.
- [19] Rollo, p. 3.
- [20] Id. at 3-4.
- [21] Id. at 4.
- [22] Id.
- [23] Id.
- [24] Id.
- [25] Id.
- [26] Id.
- [27] Id.
- [28] Id.
- [29] Records, p. 11.
- [30] Rollo, p. 4.
- [31] Id.
- [32] TSN, April 15, 2009, p.15.
- [33] Rollo, p. 5.
- [34] Id.
- [35] Id. at 6.
- [36] Id. at 6-7; CA rollo, pp. 16 and 17.
- [37] Id. at 7.
- [38] Id.
- [39] Id.
- [40] Id.
- [41] Id.
- [42] Id.
- [43] CA Rollo, p. 17.
- [44] Id.
- [45] Id.
- [46] Id.
- [47] Id.
- [48] Id.

[49] Id.

[50] Id.; rollo, p. 8.

[51] Id. at 23-24.

[52] Id. at 19-20.

[53] Id. at 20.

[54] Id. at 22-23.

[55] Records, pp. 202-209.

[56] Id. at 215-216.

[57] CA rollo, pp. 25-26.

[58] Rollo, pp. 12-13.

[59] Id. at 13.

[60] Id. at 14.

[61] Appellant's Brief dated January 4, 2013; CA rollo, p. 68.

[62] Id. at 70-71.

[63] Section 21 of RA 9165 was amended by RA 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'." RA 10640, which imposed less stringent requirements in the procedure under Section 21, was approved on July 15, 2014. Section 21, as amended by RA 10640 reads:

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

[64] See *People v. Cayas*, 789 Phil. 70, 79 (2016); see also *People v. Havana*, 776 Phil. 462, 475 (2016).

[65] RA 9165, Sec. 21(1), as implemented by its IRR.

[66] G.R. No. 199271, October 19, 2016, 806 SCRA 513.

[67] *Id.* at 536.

[68] RA 9165, Sec. 21(1), as implemented by its IRR.

[69] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[70] RA 9165, Sec. 21(1); emphasis supplied.

[71] Prior to the 2014 amendment by RA 10640, the Court clarified in *Reyes v. Court of Appeals*, 686 Phil. 137, 150-151 (2012) "that in compliance with Section 21 of R.A. No. 9165, *supra*, the physical inventory and photographing of the seized articles should be conducted, if practicable, at the place of seizure or confiscation in cases of warrantless seizure. But that was true only if there were indications that petitioner tried to escape or resisted arrest, which might provide the reason why the arresting team was not able to do the inventory or photographing at petitioner's house; otherwise, the physical inventory and photographing must always be immediately executed at the place of seizure or confiscation."

[72] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[73] *Rollo*, p. 4.

[74] *Id.*

[75] TSN, February 23, 2009, pp. 19-20.

[76] TSN, April 15, 2009, pp. 14-16.

[77] See *People v. Tan*, 401 Phil. 259, 273 (2000).

[78] TSN, April 15, 2009, p. 14.

[79] *Id.* at 14-16.

[80] *Records*, p. 10.

[81] *Id.*

[82] See *People v. Capuno*, 655 Phil. 226, 240-241 (2011), citing *People v. Garcia*, 599 Phil. 416, 432-433 (2009); *People v. Reyes*, *supra* note 66, at 536.

[83] *Records*, pp. 4-6.

[84] *Id.* at 5-6.

[85] 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"

[86] See *People v. Catalan*, 699 Phil. 603, 620 (2012).

[87] *People v. Castro*, 346 Phil. 894, 911-912 (1997).

[88] RULES OF COURT, Rule 133, Sec. 2 provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

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

[90] *People v. Pagaura*, 334 Phil. 683, 690 (1997); *People v. Salangga*, 304 Phil. 571, 589 (1994).

[91] *CA Rollo*, p. 20.

[92] *People v. Mendoza*, *supra* note 72, at 770.

[93] *Supra* note 86.

[94] *Id.* at 621.

[95] 718 Phil. 352 (2013).

[96] *Id.* at 366.

[97] *People v. Mendoza*, *supra* note 72, at 770.

[98] *Id.*

[99] *Id.*

[100] *Gamboa v. People*, G.R. No. 220333, November 14, 2016, 808 SCRA 624, 637, citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

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