

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. DELIA CALLEJO Y TADEJA AND SILVERA ANTOQUE Y MOYA@“INDAY”, ACCUSED-APPELLANTS.

G.R. No. 227427. June 06, 2018

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CAGUIOA, J:

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The Case

This is an appeal[1] filed pursuant to Section 13(c), Rule 124 of the Rules of Court (Rules) from the Decision[2] dated February 11, 2016 (Assailed Decision) rendered by the Court of Appeals (CA) Ninth Division in CA-G.R. CR-H.C. No. 05455.

The Assailed Decision affirms the Decision[3] dated November 29, 2011 issued by the Regional Trial Court of Makati, Branch 65 (RTC) in Criminal Case Nos. 10-1555 to 10-1556 finding:

(i)

Appellants Delia Callejo y Tadeja (Callejo) and Silvera Antoque y Moya (Antoque) (collectively, appellants) guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. (RA) 9165[4] and

(ii)

Appellant Callejo guilty beyond reasonable doubt for violation of Section 11, Article II of RA 9165.

The Facts

The appellants were charged under two (2) separate Informations, the accusatory portion of which reads:

[Criminal Case No. 10-1555 (Section 5 charge)]

On or about the 13[th] day of August, 2010, in the city of Makati, the Philippines, [Callejo and Antoque], conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully, and feloniously sell, deliver and distribute, without being authorized by law, zero point zero eighty (0.080) gram of methamphetamine hydrochloride, a dangerous drug, in consideration of [Php500.00].

CONTRARY TO LAW.[5] (Emphasis supplied)

[Criminal Case No. 10-1556 (Section 11 charge)]

On or about the 13[th] day of August 2010 in the city of Makati, the Philippines, [Callejo], not being lawfully authorized to possess any dangerous drugs and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession, direct custody, and control zero point zero ten (0.010) gram of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[6] (Emphasis supplied)

At the arraignment, both appellants pleaded not guilty.[7]

During the preliminary conference, the parties stipulated upon the existence of specific pieces of object and documentary evidence identified therein.[8] The parties also stipulated on the subject matter of the testimonies of police investigator PO3 Rafael Castillo (PO3 Castillo), forensic chemist Police Senior Inspector Anamelisa Bacani (PSI Bacani), and Dr. Ian Ezpeleta, the physician who conducted the medical and physical examination on the person of the appellants.[9]

Thereafter, trial ensued.

To bolster its case, the prosecution presented the testimonies of PO3 Eric T. Ramos (PO3 Ramos) and PO1 Michelle V. Gimena (PO1 Gimena) of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG), and Barangay Kagawad Miguelito P. Bernal, Jr. (Kagawad Bernal).

Their testimonies were summarized by the CA, as follows:

x x x [O]n August 13, 2010, at around 3:10PM, PO3 Ramos was at the [SAID-SOTG] office of the Makati City Police Station with other police officers. They received a report from their confidential informant about an on-going illegal drug activity in Araro [Street], Barangay Palanan, Makati City. After PO3 Ramos prepared a Coordination Form (Exh. "A") for submission to the Philippine Drug Enforcement Agency (PDEA), the police officers planned a buy-bust operation against one "Delia Callejo" and "alias Bitoy" to be led by Police Chief Inspector Jonathan B. Villamor [PCI Villamor]. PO3 Ramos was designated as poseur-buyer and [PO1 Gimena] as his immediate back-up. PCI Villamor gave PO3 Ramos a [Php500.00] bill (Exh. "D") to be used in the operation. PO3 Ramos marked the bill by putting his initials "ER" above the serial number thereof. Together with the informant, the police team proceeded to the target area at Araro [Street]. Arriving at the place, PO3 Ramos and the informant walked towards an alley, PO1 Gimena trailing them by about 15 meters. PO3 Ramos and the informant then saw their target person, later identified as Callejo, talking with another woman, later identified as Antoque. Callejo and Antoque knew the informant and Antoque approached and talked to him saying, "[m]ay ibibigay ako sayo." The informant introduced PO3 Ramos to the two women. Antoque offered the dangerous drug to PO3 Ramos. After PO3 Ramos handed the marked [Php500.00] bill to Antoque, Callejo gave him a plastic sachet containing shabu. PO3 Ramos lit a cigarette as a signal to his companions that the transaction had been completed. He introduced himself to the two women as a police officer and arrested and apprised them of their constitutional rights. Antoque tried to escape but was prevented by [PO1 Gimena]. PO3 Ramos confiscated the marked money from Antoque and took custody of the plastic sachet (Exh. "N") subject of the sale. PO1 Gimena recovered another plastic sachet (Exh. "O") from Callejo. At the place of arrest, PO3 Ramos marked the two sachets with Callejo's initials "DTC-1" and "DTC-2." A member of the back-up team went to see Kagawad Bernal to ask him to assist in the inventory of the confiscated items. The accused and the seized items were presented to Bernal who later watched as PO3 Ramos prepared the Inventory Receipt (Exh. "E"). Bernal signed the Inventory Receipt after ascertaining that the items listed were the items actually shown to him. The entire process was photographed by PO1 Gimena. PO3 Ramos then turned over the items and the Inventory Receipt to PO3 Rafael Castillo [PO3 Castillo], the Investigator on Case. PO3 Castillo prepared a request for laboratory examination (Exh. "L") of the subject specimens and a request for drug test (Exh. "Q") on the person of the two suspects. PO1 Gimena delivered the requests and the specimens to the PNP Crime Laboratory in Makati City between 7:20 PM and 7:25 PM of August 13, 2010. The specimens delivered were found positive for shabu.[10] (Emphasis supplied)

The appellants denied the prosecution's allegations and claimed that the charges filed against them were completely fabricated. The CA summarized the appellants' testimonies, as follows:

x x x Callejo testified that at 2:30 PM of [August 13, 2010], she was taking a bath in her house at Araro

[Street]. Her brother's girlfriend, Rowena, was also in the house. Thereafter, she left the house and went to an alley to do laundry work for a neighbor. She chanced upon PO3 Ramos who was in civilian clothes. PO3 Ramos suddenly grabbed her hand and told her, "Ilabas mo na." She told [PO3 Ramos] that she does not know what he was looking for. He slapped her on the face, handcuffed her, pointed his short firearm at her, and arrested her. She did not say anything or ask why she was arrested. It was only Rowena who had witnessed the incident. As she and PO3 Ramos were going out of the alley, she saw Antoque talking with PO1 Gimena, also in civilian clothes. Antoque was also in handcuffs. Shortly thereafter, she and Antoque were shown plastic containers which were on top of a table in front of a store. PO3 Ramos told her that the items were recovered from her house. She was surprised because she did not see any police operative enter her house. The police officers called Kagawad Bernal and made him sign a document. She and Antoque were then boarded inside a van and brought to the police station where they were detained.

x x x x

Antoque denied having sold illegal drugs. She claimed that on August 13, 2010, at 3 PM, she was in the house of her neighbor, Apple, at Araro Street watching TV with Apple's children, Kulit and Ryan[,] while Apple was doing laundry. Suddenly, [PO1 Gimena] approached her from behind and told her that she will ask her some questions. However, PO1 Gimena did not ask questions and instead grabbed her, searched the left back pocket of her short pants, and handcuffed her. PO1 Gimena did not get anything from Antoque's pocket or placed anything in it. Antoque asked PO1 Gimena why she handcuffed her but she was told to keep quiet. x x x Antoque and PO1 Gimena then walked out of the alley and headed to a store nearby and there she saw "plastics" being placed on a table. She saw Callejo for the first time on that day when PO3 Ramos and Callejo chanced upon her at the alley. She and Callejo were made to sit in front of the table. Kagawad Bernal asked them what happened and they told him that they do not know but they were suddenly handcuffed and brought before him. Thereafter, they were boarded in a van and brought to the SAID-SOTG office. x x x[11]

In a Decision dated November 29, 2011, the RTC found appellants guilty beyond reasonable doubt, thus:

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

In Criminal Case No. 10-1555, the [RTC] finds the accused, DELIA CALLEJO y TADEJA and SILVERA ANTOQUE y MOYA, GUILTY, beyond reasonable doubt of the charge for violation of Section 5[,] Article II, [RA] 9165 and sentences them to suffer the penalty of life- imprisonment and to pay a fine of Five Hundred Thousand Pesos [Php]500,000.00 each;

In Criminal Case No. 10-1556, the [RTC] finds the accused DELIA CALLEJO y TADEJA, GUILTY beyond reasonable doubt of the charge for violation of Section 11[,] Article II, [RA] 9165 and sentences her to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and to pay a fine [of] Three Hundred Thousand Pesos [Php]300,000.00[.]

x x x x

SO ORDERED.[12] (Emphasis supplied)

On the Section 5 charge, the RTC ruled that sufficient evidence exists on record to establish that the buy-bust operation conducted by the SAID-SOTG was valid.[13] Further, the RTC held that the prosecution successfully established the identity of the corpus delicti in the present case, as the integrity and evidentiary value of the plastic sachet marked as "DTC-1" which was purchased from Callejo had been "well safeguarded as to be reliable." [14]

On the Section 11 charge, the RTC held that the prosecution sufficiently proved that the plastic sachet marked as "DTC-2" containing shabu had been recovered from Callejo's possession, and that the latter possessed the same freely and consciously, without proper authority.[15]

The RTC rejected the appellants' defense of frame-up. In essence, the RTC held that the presumption of regularity in the performance of official duties stand in the absence of clear and convincing evidence showing any ill motive on the part of the SAID-SOTG operatives.[16] For this reason, the RTC ascribed credence to the testimonial evidence presented by the prosecution, having found no reason to doubt the same.[17]

CA Proceedings

On December 2, 2011, the appellants filed a Notice of Appeal[18] which was given due course in the RTC's Order[19] dated December 21, 2011. Thereafter, the parties filed their respective briefs.[20]

In the Brief for the Accused-Appellants[21] dated November 23, 2012, appellants averred that the RTC gravely erred when it found them guilty of the offenses charged despite the broken chain of custody in the seizure and handling of the alleged corpus delicti.[22] In particular, appellants raised the following gaps in the chain:

(i)

The testimony of investigating officer PO3 Castillo was not presented to confirm that he received the seized items from apprehending officers PO3 Ramos and PO1 Gimena;[23] and

(ii)

The testimony of forensic chemist PSI Bacani was not presented to explain how the seized items were placed in her custody, and affirm the veracity of the findings in her Physical Science Report purportedly confirming that the sachets seized from the appellants contain methylamphetamine hydrochloride.[24]

In the Brief for the Plaintiff-Appellee[25] dated April 10, 2013, the Office of the Solicitor General[26] (OSG) emphasized that the parties had already stipulated upon the subject matter of PO3 Castillo and PSI Bacani's testimonies, and it is precisely because of this reason that their presentation in open court had been dispensed with.[27] The OSG further averred that in any case, there is nothing in RA 9165 or its implementing rules which requires each and everyone who came in contact with the seized drugs to testify in court, as long as the chain of custody of the seized drugs is clearly established to be unbroken.[28]

On the basis of the foregoing submissions, the CA rendered the Assailed Decision affirming the RTC Decision. The dispositive portion of said Decision reads:

WHEREFORE, the appeal is DENIED. The November 29, 2011 Decision of the [RTC] in Criminal Case Nos. 10-1555 and 10-1556 is AFFIRMED.

SO ORDERED.[29]

Aggrieved, the appellants filed their Notice of Appeal[30] dated March 8, 2016 on even date. Appellants' Notice of Appeal was given due course by the CA through its Resolution[31] dated April 5, 2016.

On December 5, 2016, the Court issued a Resolution[32] requiring the parties to file their respective supplemental briefs within thirty (30) days from notice.

The OSG and the appellants filed their respective manifestations[33] dated April 19, 2017 and May 5, 2017 stating that they will no longer file supplemental briefs.

The Issues

The Court is now called upon to determine whether the CA committed reversible error in sustaining:

(i)

Callejo and Antoque's conviction for violation of Section 5, Article II of RA 9165; and

(ii)

Callejo's conviction for violation of Section 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious.

After a very thorough review of the records, the Court resolves to acquit appellants Antoque and Callejo as the prosecution utterly failed to prove that the SAID-SOTG complied with the mandatory requirements of Section 21 of RA 9165, and establish the unbroken chain of custody of the seized items.

For a successful prosecution for the crime of illegal sale of drugs under Section 5 of RA 9165, the following must be proven: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it.[34]

On the other hand, a successful prosecution for the crime of illegal possession of dangerous drugs under Section 11 of RA 9165 requires sufficient proof that: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[35]

In cases involving dangerous drugs, the drug itself constitutes the corpus delicti of the offense.[36] Thus, it is of paramount importance that the prosecution prove that the identity and integrity of the seized drugs are preserved. Each link in the chain of custody of the seized drugs must be established.

Notably, while the present appeal involves two separate charges for sale and possession of dangerous drugs, both charges stem from a single buy-bust operation, and in turn, a single chain of custody.

The requirements of paragraph 1, Section 21, Article II of RA 9165

Section 21, Article II of RA 9165 prescribes the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. RA 9165 was later amended by RA 10640,[37] which was approved on July 15, 2014. Since the offenses subject of this appeal were allegedly committed on August 13, 2010, the original version of Section 21 applies. Said original version 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 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[.]

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) filled in the details as to the prescribed place of inventory and photographing. The provision also added a saving clause in case of non-compliance with the requirements under justifiable grounds, thus:

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:

(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[.]

The above provisions impose the following requirements in the manner of handling and inventory, time, witnesses, and of place after the arrest of the accused and seizure of the dangerous drugs:

(i)

The initial custody requirements must be done immediately after seizure or confiscation;

(ii)

The physical inventory and photographing must be done in the presence of:

a.

the accused or his representative or counsel;

b.

a representative from the media;

c.

a representative from the Department of Justice (DOJ); and

d.

any elected public official.

(iii)

The conduct of the physical inventory and photograph shall be done at the:

a.

place where the search warrant is served; or

b.

nearest police station; or

c.

nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

All the above requirements must be complied with for a successful prosecution for the crime of illegal sale and possession of drugs under Sections 5 and 11 of RA 9165. Any deviation in the mandatory procedure must be satisfactorily justified by the apprehending officers. Under Section 21 of the IRR, the Court may allow deviation from the procedure only where the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizure and custody over the confiscated items shall not be rendered void and invalid.[38]

Jurisprudence states that the procedure enshrined in Section 21, Article II of RA 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.[39] 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.[40]

In this case, the SAID-SOTG committed patent procedural lapses in the seizure, initial custody, and handling of the seized drug that create reasonable doubt as to the identity and integrity of the drugs and consequently, reasonable doubt as to the guilt of the appellants.

The SAID-SOTG failed to comply with the three-witness rule.

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. In addition, the inventory must be done in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who 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. And only if this is not practicable, does the IRR allow that the inventory and photographing be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, this also means that the three 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. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

The SAID-SOTG failed to comply with the three-witness rule.

As confirmed by the testimonies presented by the prosecution, Kagawad Bernal was called to the place of arrest only after the apprehension of the appellants and the alleged seizure of drugs from their possession. In fact, Kagawad Bernal averred that he was surprised when he was summoned by the SAID-SOTG while he was cooking lunch in his home, which, in turn, happened to be near the place of arrest. It thus becomes evident that the enlistment of Kagawad Bernal's participation came as a mere afterthought, as a means to secure his signature on the Inventory Receipt prepared by poseur-buyer PO3 Ramos.

Kagawad Bernal testified:

CROSS-EXAMINATION [OF KAGAWAD BERNAL] BY [ATTY. PHILOMEL FRANCISCO[41]] (ATTY.

FRANCISCO)]

x x x x

Q:

Mr. Witness, I would like to ask you, where were you on August 13, 2010 at around 3:10 in the afternoon?

A:

I was at home, sir.

Q:

Where in particular?

A:

4494 Araro Street, Palanan, Makati City.

Q:

What were you doing, if any, during that time?

A:

That time, sir, I was cooking.

Q:

So, is it correct to say, Mr. Witness, that during this time, you did not witness the alleged arrest upon the person of the two (2) accused?

A:

Yes.

Q:

And is it also correct to say that you did not witness the alleged seizure of the items as indicated in this Inventory Receipt when you signed them?

A:

Yes.

Q:

During the time that they were arrested?

A:

Yes, sir.

Q:

And [were you] just surprised that a police officer went to your house and requested you to sign an Inventory Receipt with respect to this case?

A:

Yes, sir.

x x x x

Q:

So, Mr. Witness, do you agree with me that you have no personal knowledge as to the alleged arrest upon the person of these two accused?

A:

...What...

Q:

You have no personal knowledge as to the circumstances surrounding the arrest upon the person of these two x x accused?

A:

Yes, sir.

Q:

And also, you have no personal knowledge as to the seizure of these items as indicated in the Inventory Receipt from the two accused?

A:

Yes, sir, I wasn't there.[42] (Emphasis supplied.)

As to the absence of witnesses from the DOJ and the media, PO1 Gimena testified:

[Cross-examination of PO1 Gimena by Atty. Francisco:]

Q:

Was there any representative from the [DOJ] during the inventory?

A:

None, sir.

Q:

How about any media personnel?

A:

None also, sir.[43]

The above testimonies glaringly show that SAID-SOTG's lone witness, Kagawad Bernal, was not called to be present near or at the place of arrest. In fact, Kagawad Bernal himself confirmed that he did not even have prior knowledge of the buy-bust operation and that he was even taken by surprise when he was summoned to witness the physical inventory and sign the Inventory Receipt thereafter.

Further, no explanation was offered as to the absence of the two other insulating witnesses from the DOJ and the media. The submissions of the prosecution do not indicate that the SAID-SOTG exerted genuine effort in order to secure their presence at the time of apprehension.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,^[44] 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 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 sachets that were evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.^[45]

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the buy-bust arrest. It is at this point when 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 to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three insulating 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".

The prosecution failed to establish the chain of custody of the seized drugs.

As stated earlier, there is a saving clause in Section 21 of the IRR, which states: "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."

In *People v. Alviz*,^[46] the Court held that the integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same is duly established.

Chain of custody is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

b.

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for 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[.] (Emphasis supplied)

In this case, gaps exist in the chain of custody of the seized items which creates reasonable doubt as to the identity and integrity thereof.

To recall, the appellants allege that the prosecution's failure to offer the testimonies of PO3 Castillo and PSI Bacani in open court left two gaps in the chain of custody of the seized items. According to the appellants, such failure also renders the statements in PO3 Castillo's Inventory Receipt and PSI Bacani's Physical Science Report inadmissible due to lack of proper authentication. The OSG contends, however, that the subject matter of the testimonies of PO3 Castillo and PSI Bacani, as well as the veracity of the statements in the Inventory Receipt and Physical Science Report, can no longer be assailed since they had been stipulated upon by the parties during the preliminary conference.

In this respect, the Court finds that while the parties indeed made the stipulations in question, such stipulations do not relate to or do not cover the specific manner through which the seized items were handled while in their possession. Further, they do not indicate how such items were subsequently turned over to the next responsible party.

PO3 Ramos testified that he turned over the seized items to PO3 Castillo for investigation and referral after physical inventory and photographing.[47] Notably, however, no other testimony was offered to explain how the seized items were passed on and placed in the hands of PO3 Castillo and PSI Bacani, or how the integrity of said items were preserved while they remained in their custody.

The Court's ruling in *People v. Sanchez*[48] (*Sanchez*) lends guidance. In *Sanchez*, the trial court dispensed with the testimony of the forensic chemist therein after the parties stipulated that "the items allegedly confiscated from the accused were submitted to the crime laboratory for examination and the findings were put into writing." [49] As a result, only the sole testimony of the poseur-buyer was presented to attest to the chain of custody of the seized items therein. The Court held:

x x x [The sole testimony presented by the prosecution] failed to disclose the identities of the desk officer and the investigator to whom the custody of the drugs was given, and how the latter handled these materials. No reference was ever made to the person who submitted the seized specimen to the PNP Crime Laboratory for examination. Likewise, no one testified on how the specimen was handled after the chemical analysis by the forensic chemist. While we are aware that the RTC's Order of August 6, 2003 dispensed with the testimony of the forensic chemist because of the stipulations of the parties, we view the stipulation to be confined to the handling of the specimen at the forensic laboratory and to the analytical results obtained. The stipulation does not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession. To be sure, personnel within the police hierarchy (as SPO2 Sevilla's testimony casually mentions) must have handled the drugs but evidence of how this was done, i.e., how it was managed, stored, preserved, labeled and recorded from the time of its seizure, to its receipt by the forensic laboratory, up until it was presented in court and subsequently destroyed — is absent from the evidence adduced during the trial. x x x

The recent case of *Lopez v. People* is particularly instructive on how we expect the chain of custody or "movement" of the seized evidence to be maintained and why this must be shown by evidence:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[50] (Emphasis supplied)

In turn, the importance of establishing the chain of custody in drugs cases was explained in *Mallillin v. People*[51]:

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. [52]

As the drug itself is the corpus delicti in drugs cases, it is of utmost importance that there be no doubt or

uncertainty as to its identity and integrity.

As in Sanchez, the scope of the stipulations made by the parties in this case were similarly narrow:

MINUTES OF THE PRELIMINARY CONFERENCE

x x x The prosecution offered for stipulation the existence of the following documentary and object evidence, to which the defense was amenable:

x x x x

5. Inventory Receipt

x x x x

16. Physical Science Report No. "D-287-10s"

x x x x

The prosecution and the defense likewise stipulated on the subject matter of the testimonies of the following witnesses: [PO3 Castillo], the police investigator on [the] case; [PSI Bacani] the forensic chemist who conducted the laboratory examination on the items allegedly taken from the accused and on the urine sample x x x. Hence, their testimonies in open court were already dispensed with.[53] (Emphasis supplied)

Considering the limited scope of the foregoing stipulations, as well as the lack of any other evidence to supplement the same, the Court finds that the prosecution failed to establish each link in the chain of custody as required by Section 21. Such failure casts doubt on the identity and integrity of the seized items which cannot be excused through the expedience of invoking presumption of regularity.

The apprehending officers' testimonies are plagued with material inconsistencies.

The narrative presented by the SAID-SOTG anent the identity of their confidential informant is marred with inconsistencies. During the course of their respective examinations in open court, both PO3 Ramos and PO1 Gimena refused to reveal the identity of their confidential informant on the premise of confidentiality and secrecy. On cross-examination, however, both officers admitted that said informant was known to the appellants and had openly assisted in brokering the sale between PO3 Ramos and Callejo during the buy-bust operation.

PO3 Ramos and PO1 Gimena testified:

CROSS-EXAMINATION [OF PO3 RAMOS] BY ATTY. FRANCISCO:

Q:

According to your Affidavit of Arrest, Mr. Witness, you mentioned that a regular confidential informant called your office, what do you mean by a "regular confidential informant"?

A:

It means, sir, that said confidential informant had given us two or more information.

x x x x

Q:

Can you give us the name of this confidential informant?

A:

No, sir, it's confidential.

Q:

You cannot give the name of this informant but yet, he was with you during the operation, is that correct?

A:

Yes, sir.

Q:

Will it not compromise the security and identity when he was with you all along during the operation?

A:

During that time, sir, he was wearing a cap and his mouth was covered by a handkerchief, to establish another identity, we just want him to pinpoint the drug pushers.

x x x x

THE COURT:

x x x x

Q:

Was the informant known to the two accused?

A:

Yes, sir.

Q:

And yet, according to you, the informant has to wear a face mask?

A:

Our informant was known to them, that's why they gave us the shabu, they knew the informant, sir.

Q:

Yes, but then again, according to you, your informant has to wear this mask on his face. Why did he have to do that when he was already acquainted with the two (2) accused?

A:

What I know, your Honor, [is] that's his style.

Q:

Whose style was that?

A:

That's the style of the informant, your Honor, because he has to avoid someone in that place.

Q:

But don't you think by wearing a mask could give somewhat an alert on the part of the two (2) accused that something wrong could happen?

A:

Our transaction, your Honor, was[:] the informant was in need, then this Inday [Antoque] approached me and said, "may ibibigay ako sa'yo". That's how easy it is to buy from them.[54] (Emphasis supplied)

CROSS-EXAMINATION [OF PO1 GIMENA] BY ATTY. FRANCISCO:

x x x x

Q:

Madam Witness, you indicated in your Joint Affidavit of Arrest, particularly in item number 1 that prior to the suspect's arrest, your attention was called upon thru a report of a regular confidential informant, is that correct?

A:

Yes, sir.

x x x x

Q:

And what's the name of this confidential informant?

A:

I am sorry, sir, I cannot indicate the name of the asset, sir.

Q:

And the reason is?

A:

For confidentiality, sir.

Q:

Of course, you cannot divulge the name or disclose the name of this confidential informant to this honorable Court because according to you, number one it is confidential, number 2 to protect the identity of this person from the accused, correct?

A:

Yes, sir.

x x x x

THE COURT:

x x x x

Q:

How did PO3 Ramos established (sic); meaning transact with the two (2) accused?

A:

He was assisted by the asset, your Honor, to the suspect.

x x x x

Q:

And PO3 Ramos knew the confidential informant?

A:

Yes, your Honor.

x x x x

Q:

PO3 Ramos knows the informant, the two (2) accused knows (sic) the informant and of course as you said the informant was present during the buy-bust operation?

A:

Yes, your Honor.

x x x x

Q:

So, it's only Fiscal, the defense counsel as well as the court who are in the dark regarding the identity of the informant because as you said, he is already known to the two (2) accused as well as the other police officers?

A:

Yes, your Honor.

Q:

And yet, although he is already known to the two (2) accused you still believe that by not divulging his name you will be able to protect his security?

A:

Yes, your Honor.[55] (Emphasis supplied)

The foregoing testimonies are nonsensical and are simply not worthy of belief. The apprehending officers' inability to sufficiently explain why the confidential informant was permitted to openly participate with a mask on his face or handkerchief covering his mouth in the buy-bust operation despite the proclaimed need to preserve his identity for security purposes casts a cloud of doubt over the SAID-SOTG's narrative.

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.[56] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged.[57]

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.[58] In *People v. Enriquez*,[59] the Court held:

x x x [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."[60] (Emphasis supplied)

The presumption of regularity cannot overcome the stronger presumption of innocence in favor of the accused.[61] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[62] Trial courts have been directed by the Court to apply this differentiation.[63]

Verily, strict compliance with Section 21 of RA 9165 and the IRR is mandated under the 2010 PNP Manual on Anti-Illegal Drugs Operation and Investigation (2010 AIDSOTF Manual) which was then applicable[64] :

Section 13. Handling, Custody and Disposition of Drug Evidence

a. In the handling, custody and disposition of the evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.

b. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position

in the place where it is situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165.

c. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found and seized. The seizing officer shall secure and preserve the evidence in a suitable evidence bag or in an appropriate container for further laboratory examinations.

d. Where the situation requires urgent action, suspected drug evidence acquired may be "field-tested" using a drug test kit. If the result is positive this will be the basis of the seizure and the conduct of further drug analysis.

e. Containers, packaging, equipment, etc., suspected of containing trace amounts of drugs including controlled precursors and essential chemicals will be considered drug evidence and shall be submitted for analysis.

f. In every negation operation, a "seizing officer" shall be designated who shall be responsible for the inventory and initial custody of all drug and non-drug evidence during the anti-drug operations. These will later be turned over to the investigation officer or any member of the apprehending team, as the case may be, up to the Crime Laboratory for laboratory examination and proper disposition.

g. Cellphones, Computers/laptops or any other electronic equipment or gadgets shall be properly preserved for evidentiary purposes and technical exploitation.

A – Drug Evidence

a. Upon seizure or confiscation of the dangerous drugs or controlled precursors and/or essential chemicals (CPECs), laboratory equipment, apparatus and paraphernalia, the operating unit's seizing officer/ inventory officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

a.

The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel.

b.

A representative from the media.

c.

A representative from the Department of Justice; and

d.

Any elected public official who shall affix their signatures and who shall be given copies of the inventory.

x x x x

d. If the said procedures in the inventory, markings and taking of photographs of the seized items were not

observed, (Section 21, RA 9165), the law enforcers must present an explanation to justify non-observance of prescribed procedures and "must prove that the integrity and evidentiary value of the seized items are not tainted."

x x x x

f. Within the same period, the seizing/ inventory officer shall prepare a list of inventory receipt of confiscation/ seizure to include but not limited to the following:

- Time, date and place of occurrence/seizure.
- Identity of person/s arrested.
- Identity of the seizing officer and all persons present.
- Circumstances in which seizure took place.
- Description of a vehicle, vessel, place or person searched where the substance was found.
- Description of packaging, seals and other identifying features.
- Description of quantity, volume and units and the measurement method employed.
- Description of the substance found.
- Description of any preliminary identification test (test kit) used and results.

g. Within 24 hours upon confiscation/ seizure when practicable, all seized drugs and/ or CPECs shall be submitted to the PNP Crime Laboratory for examination and proper disposition.

h. All pieces of drug evidence shall be turned over by the seizing officer to the investigator on case who will subsequently turnover the same to the PNP Crime Laboratory for examination. Receipts shall be required in every phase of this turn-over.

i. The seizing officer shall accomplish the Chain of Custody Form with the affixed signatures which shall accompany the evidence turned over to the investigator-on-case or the Crime Laboratory as the case may be.[65] (Emphasis supplied)

In this case, the presumption of regularity cannot stand due to the glaring disregard by the SAID-SOTG of the established procedure under Section 21 of RA 9165, its IRR, and the 2010 AIDSOTF Manual.

The prosecution's failure to prove the corpus delicti of the offenses of sale and possession of illegal drugs due to unexplained breaches of procedure committed by the SAID-SOTG, as well as the material inconsistencies in the apprehending officers' testimonies on the confidentiality of their informant's identity, taken together, cast reasonable doubt over appellants' guilt. Verily, the prosecution failed to overcome the presumption of innocence ascribed to the appellants.

As a final note, the Court reiterates the reminder it has given in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right[s] of the individual in the

name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x[66]

In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the corpus delicti and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the record/s of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[67]

WHEREFORE, premises considered, the Decision dated February 11, 2016 rendered by the Court of Appeals in CA-G.R. CR-H.C. 05455 is REVERSED and SET ASIDE. Thus:

- Appellants Delia Callejo y Tadeja and Silvera Antoque y Moya @ "Inday" are hereby ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165; and

- Appellant Delia Callejo y Tadeja is hereby ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165.

Appellants are ordered immediately RELEASED from detention, unless they are 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,[*] Perlas-Bernabe, and Reyes, Jr., JJ., concur.

Peralta, J., please see separate concurring opinion.

[*] Senior Associate Justice (Per Section 12, R.A. 296, The Judiciary Act of 1948, as amended)

[1] Rollo, pp. 13-15.

[2] Id. at 2-12. Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea--Leagogo and Amy C. Lazaro-Javier concurring.

[3] Records, pp. 169-176. Penned by Presiding Judge Edgardo M. Caldoná.

[4] 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, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002".

[5] Records, p. 2.

[6] Id. at 6.

[7] Rollo, p. 3.

[8] The Minutes of the Preliminary Conference detail the following object and documentary evidence stipulated upon by the parties: (i) Coordination Form dated August 13, 2010; (ii) Certificate of Coordination; (iii) Petty Cash Voucher; (iv) One (1) Php500.00 bill; (v) Inventory Receipt; (vi) Photographs; (vii) Temporary Medical Certificate of Callejo; (viii) Temporary Medical Certificate of Antoque; (ix) Spot Report; (x) Joint Affidavit of Arrest; (xi) Affidavit of Undertaking executed by PO3 Castillo; (xii) Case Referral; (xiii) Request for Laboratory Examination; (xiv) Small Brown Envelope; (xv) Two (2) heat-sealed plastic sachets containing white crystalline substance with markings "DTC-1" and "DTC-2"; (xvi) Physical Science Report No. "D-287-10s"; (xvii) Request for Drug Test; and (xviii) Drug Test Results. (Emphasis supplied) See records, p. 46.

[9] Records, p. 47.

[10] Rollo, pp. 3-5.

[11] Id. at 5-6.

[12] Records, pp. 175-176.

[13] Id. at 172.

[14] Id. at 173.

[15] Id. at 174.

[16] Id.

[17] Id. at 174-175.

[18] CA rollo, p. 26.

[19] Id. at 27.

[20] Brief for the Accused-Appellants dated November 23, 2012 and Brief for the Appellee dated April 10, 2013. See id. at 43-56 and 75-87.

[21] CA rollo, pp. 43-56.

[22] Id. at 49.

[23] See id. at 50-52.

[24] See id. at 52.

[25] Id. at 73-87.

[26] For and on behalf of the People of the Philippines.

[27] CA rollo, p. 82.

[28] Id. at 83.

[29] Rollo, p. 12.

[30] Id. at 13-15.

[31] Id. at 16.

[32] Id. at 18-19.

[33] Manifestation and Motion dated April 19, 2017 filed by the OSG and Manifestation (In Lieu of Supplemental Brief) dated May 5, 2017 filed by the appellants. See rollo, pp. 26-30 and 21-25.

[34] *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 251.

[35] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, p. 5.

[36] *People v. Suan*, 627Phil. 174, 179 and 188 (2010).

[37] 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."

[38] See *People v. Cayas*, 789 Phil. 70, 79-80 (2016).

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

[40] Id. at 637-638.

[41] Counsel for appellants.

[42] TSN, May 10, 2011, pp. 11-12; records, pp. 290-291.

[43] Id. at 24-25; id. at 249-250.

[44] 736 Phil. 749 (2014).

[45] Id. at 764.

[46] 703 Phil. 58, 73 (2013).

[47] TSN, February 22, 2011, pp. 14-15; records, pp. 197-198.

[48] 590 Phil. 214 (2008).

[49] Id. at 225.

[50] Id. at 237-238.

[51] 576 Phil. 576 (2008).

[52] Id. at 588-589.

[53] Records, pp. 46-47.

[54] TSN, February 22, 2011, pp. 15-16, 18-19; records, pp. 198-199, 201-202.

[55] TSN, April 12, 2011, pp. 15-19; id. at 240-244.

[56] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

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

[58] *People v. Mendoza*, supra note 44, at 770.

[59] 718 Phil. 352 (2013).

[60] Id. at 366.

[61] *People v. Mendoza*, supra note 44, at 770.

[62] Id.

[63] Id.

[64] Pursuant to National Police Commission Resolution No. 2010-094, February 26, 2010.

[65] 2010 AIDSOTF Manual, Rule II, Sec. 13.

[66] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

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

SEPARATE CONCURRING OPINION

PERALTA, J.:

I concur with the ponencia in acquitting accused-appellants Delia Callejo y Tadeja and Silvera Antoque y Moya of the separate charges of illegal sale and illegal possession of dangerous drugs, or violation of Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. No. 9165),^[1] respectively. Indeed, the prosecution failed to prove the corpus delicti of the said offenses due to the unexplained breaches of procedure committed by the buy-bust team, as well as the material inconsistencies in the apprehending officers' testimonies on the confidentiality of their informant's identity. I also agree that despite the non-observance of the three-witness rule under Section 21^[2] of R.A. No. 9165, no justifiable reason was proffered by the prosecution as to (1) why the elected public official was called to the place of arrest only after the arrest of the appellants and the seizure of drugs from their possession; and (2) why representatives from the media and from the Department of Justice were not present during the inventory of the seized items. At any rate, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:^[3]

(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.

It bears emphasis that R.A. No. 10640,^[4] which amended Section 21 of R.A. No. 9165, now only requires two (2) witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized

items, namely: (a) an elected public official; and (b) either a representative from the National Prosecution Service or the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts." [5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected barangay officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law." [6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and ensure [its] standard implementation." [7] Senator Sotto explained why the said provision should be amended:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.

x x x x

Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared. [8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellants

committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media, and (b) the DOJ, and; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." [9]

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. [10] Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. [11] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence. [12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 [13] of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellants' conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity. [14] The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law. [15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam* [16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a

rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165, to wit:

Section 29. Criminal Liability for Planting of Evidence. - Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

Section 32. Liability to a Person Violating Any Regulation Issued by the Board. -The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

[1] "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"

[2] 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;

[3] *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

[4] "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."

[5] Senate Journal, Session No. 80, 16[th] Congress, 1[st] Regular Session, June 4, 2014, p. 348.

[6] *Id.*

[7] *Id.*

[8] Id. at 349-350.

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017,

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[11] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[12] Id.

[13] Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, their equivalent.

[14] *People v. Ramirez*, *supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

[16] G.R. No. 202206, March 5, 2018.

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