

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. NADER MUSOR Y ACMAD, ACCUSED-APPELLANT.

G.R. No. 231843. November 07, 2018

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CAGUIOA, J:

This is an Appeal[1] under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated July 25, 2016 of the Court of Appeals, Thirteenth Division (CA) in CA-G.R. CR-HC. No. 07592, which affirmed the Decision[3] dated January 21, 2015 and Order[4] dated May 11, 2015 rendered by the Regional Trial Court, Branches 26 & 66, respectively, of San Fernando City, La Union (RTC) in Criminal Case No. 9055, which found herein accused-appellant Nader Musor y Acmad (Musor) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act, as amended (RA 9165).

The Facts

An Information was filed against accused-appellant Musor for violating Section 5, Article II of RA 9165, the accusatory portion of which reads:

That on or about the 28[th] day of February, 2011 in the City of San Fernando, La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, and feloniously, deliver and sell two (2) small heat sealed transparent plastic sachets containing methamphetamine hydrochloride otherwise known as "shabu" with an individual weight of zero point one two nine seven (0.1297) gram and zero point zero eight zero two (0.0802) gram to PO2 Armand Bautista, who posed as poseur buyer, and in consideration of said shabu, used marked money consisting of one (1) piece of FIVE HUNDRED (P500.00) Philippine Currency bill with serial number MH450138 without first securing the necessary permit, license or authority from the proper government agency.

Contrary to law.[5]

Version of the Prosecution

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

In the evening of February 28, 2011, a confidential informant (CI) went to PNP, San Fernando City, La Union and relayed to PO2 Armand Bautista accused-appellant's illegal drug activities. The CI told PO2 Bautista that accused-appellant would be selling drugs later at Wil-Jan Bar and Inn (Wil-Jan). PO2 Bautista immediately conveyed the same to their Chief. After the PNP coordinated with PDEA and RAIDSOTG for a buy-bust operation, they conducted a briefing wherein PO2 Bautista was designated as the poseur-buyer while PO1 Jose Maria Bersola as the back-up.

Thereafter the marked money was prepared and the buy-bust team proceeded to Wil-Jan at 9:00 o'clock in the evening. When they arrived near the area, the informant pointed to the person standing in front of Wil-Jan as the accused Musor. When they approached the accused, the informant introduced PO2 Bautista as the interested buyer of shabu. The accused then asked PO2 Bautista how much shabu he wanted to buy. The latter

told him that he wanted to buy P500.00 worth of shabu. The accused got something from his pocket and gave it to PO2 Bautista. When PO2 Bautista confirmed that it was a [sic] genuine shabu he put it in his right pocket. Then, he gave the marked money to the accused. After he received the money, PO1 Bersola announced his arrest. PO2 Bautista frisked the accused and recovered another plastic sachet containing white crystalline substance, and put the same in his left pocket. Thereupon, their team leader ordered them to return to the police station to avert any commotion, as their location was dark and there were persons drinking in the area.

At the police station, the team asked for the presence of a barangay official and a media representative to witness the marking and preparation of the inventory. PO2 Bautista marked the plastic sachets as "ASB1" and "ASB2" and prepared the inventory. He also prepared a request for laboratory examination which was submitted together with the sachets containing crystalline substance to PO2 Bcelona at the crime laboratory. After receiving them, PO2 Bcelona [sic] immediately turned over the same to the forensic chemist, P/Ins. Manuel.

At the crime laboratory, P/Ins. Manuel checked the markings of each specimen and conducted an examination and found the presence of methamphetamine hydrochloride or a substance known as "shabu". Thereafter, she put the sachets in a sealed brown envelope and turned it over to the Evidence Custodian. The evidence was placed in the evidence room where the keys were being kept by P/Ins. Manuel.[6]

Version of the Defense

On the other hand, the defense's version, as summarized by the CA, is as follows:

Accused alleged that around 2:00 o'clock in the afternoon of February 28, 2011, he received a call from his friend "Tisay". She told him that she will go to the beach at Pagudpud to celebrate his [sic] wedding. Accused told her that he will go there after he finished helping his uncle. Thereafter, he proceeded to Pagudpud by riding a tricycle. Unfortunately, he was not able to reach the destination because a van blocked their way. Five persons instructed him to alight from the tricycle. He was blindfolded and forced to ride the van. When his blindfold was removed, he was already at the police station.

After the conference of the policemen, they brought the accused to the van again and proceeded to a place where the police called a media personnel to take pictures of the accused. He did not allow the personnel to take pictures of him. So, the police brought him back to the police station and locked him inside a prison cell.[7]

Musor was arraigned on June 28, 2011, in which he pleaded "not guilty" to the offense charged. Thereafter, trial on the merits ensued.

Ruling of the RTC

In the assailed Decision[8] dated January 21, 2015, the RTC found Musor guilty of the crime charged and was convinced that the chain of custody of evidence was not broken and that the integrity and the evidentiary value of the seized items were duly preserved. The dispositive portion of the decision reads:

WHEREFORE in light of the foregoing, judgment is hereby rendered finding the accused Nader Musor GUILTY beyond reasonable doubt of Violation of Section 5[,] Article II of Republic Act No. 9165 for Sale of Dangerous Drugs and sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00.

Considering that penalty imposed is life imprisonment, the immediate confinement of the accused to the [New Bilibid Prison] is ordered.

Accused Nader Musor who has been detained since his arrest shall be credited on the service of his sentence consisting of deprivation of liberty with the full time during which he has undergone preventive imprisonment

if he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon corrected prisoners.

The items subject matter of this case are hereby forfeited in favor of the Government, the same to be disposed in accordance with the law.

Given in Chambers, this 21[st] day of January 2015 in the City of San Fernando, La Union.[9]

The RTC ruled that all the prosecution witnesses were able to authenticate the evidence before the court by their respective testimonies on the chain of custody from the moment it was seized from the accused up to the time it was presented in court. The elements necessary to consummate the crime, that is, proof that the illicit transaction took place, coupled with the presentation in court of the corpus delicti or the shabu as evidence, are present. It also ruled that although the inventory and marking were not done at the scene of the crime, but inside the police station where they proceeded right after the arrest, PO2 Bautista was able to explain that it was necessary to move out because the place was a bar and people were drinking in the said place. While it is true that it appears from his testimony that there were no photographs taken of the inventory and marking, the RTC said that the lack thereof does not disprove that a sale took place and the demands of the chain of custody of dangerous drugs were sufficiently complied with. It further stated that the failure of the police officers to conduct the required physical inventory and photographing of the confiscated drugs pursuant to the guidelines is not fatal and does not automatically render the arrest of the accused illegal or the items seized and/or confiscated inadmissible. What is of utmost importance, the RTC pointed out, is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of the accused.[10] It further ruled that the accused's defenses of denial of the crime and frame-up are inherently weak defenses.[11]

Undeterred with the decision, Musor asked for a reconsideration with inhibition. In an Order dated April 6, 2015, the RTC Branch 26 did not act on the motion for reconsideration, but granted the motion for inhibition on the ground of delicadeza and not on the grounds cited by Musor. It was the RTC Branch 66 which issued the assailed Order denying his motion for reconsideration thereon.[12]

Aggrieved, Musor appealed to the CA.

Ruling of the CA

In the assailed Decision[13] dated July 25, 2016, the CA affirmed Musor's conviction. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the appeal is DENIED. The assailed January 21, 2015 Decision and May 11, 2015 Order of the RTC, Branches 26 and 66, respectively, San Fernando City, La Union in Criminal Case No. 9055, are hereby AFFIRMED.

SO ORDERED.[14]

The CA held that the prosecution was able to establish all the essential elements of the crime charged. PO2 Bautista categorically testified regarding the consummation of the sale when Musor gave him the sachet with crystalline substance after the latter received the P500.00 marked money, which substance was later on confirmed to be shabu.[15] It further ruled that non-compliance with Section 21 does not render the accused's arrest illegal or the items seized/confiscated from him inadmissible for as long as the integrity and evidentiary value of the seized items are preserved.[16] It held that the chain of custody was not broken from the time of marking and inventory, to laboratory examination, and up to the presentation of the sachets containing shabu to the court.[17] The sachets containing methamphetamine hydrochloride or shabu were properly presented and identified by PO2 Bautista in the court a quo as the same sachets he marked and inventoried at the time of their buy-bust operation against Musor.[18]

Hence, the instant appeal.

Issue

Whether or not Musor's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit accused-appellant Musor as the prosecution utterly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165 which thus results in its failure to prove his guilt beyond reasonable doubt.

The accused-appellant was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution shall prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[19]

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the corpus delicti or the body of the crime. In drug cases, the dangerous drug itself is the very corpus delicti of the violation of the law.[20] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[21] the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[22] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[23]

In this connection, Section 21, Article II of RA 9165,[24] the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because with the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[25]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[26] In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not ipso facto render the seizure and custody over the items as void and invalid. However, this is with the caveat, as the CA itself pointed out, that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[27] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[28]

In the present case, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug — which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of the accused.

The required witnesses were
not present at the time of
seizure and apprehension.

In the case at bar, none of the three required witnesses were present at the time of seizure and apprehension as they were only called to the police station for the conduct of inventory. As PO2 Bautista, part of the apprehending team, himself testified:

Q

After you arrested Nader Musor after you conducted the body search on his person, what did you do next?

A

We proceeded to the police station, sir.

Q

And from the place of arrest up to the police station, who was in possession of the two sachets believed to be shabu?

A

Me, sir.

Q

When you were in the police station, what did you do there?

A

We called for a barangay official and representative of the media, sir.

Q

For what purposes, mr. witness?

A

To be witnesses in the inventory, sir.

Q

When these witnesses arrived, what happened next?

A

We conducted inventory and placed the marking on the items, sir.

Q

Who conducted the said markings?

A

Me, sir.[29]

x x x x

Q

Mr. witness, how come that you conducted the inventory taking of the seized items at the police station instead of the place of arrest?

A

That was the instruction of our team leader because there might be a commotion since it is already in the evening and very dark and there were plenty of persons drinking at the place, sir.[30]

x x x x

Q

After you confiscated those items, you immediately brought the accused to your police station?

A

Yes, sir.

Q

You did not make any marking at the place where you allegedly confiscated the prohibited drugs?

A

We were supposed to conduct the marking at the place of arrest but it was dark at the place and there were persons drinking at the Pub sir, so as per instructions of our team leader, we will be going back to the police station.

Q

Who is that team leader who instructed you that you will make the inventory in the police station?

A

Police Senior Inspector Quezada, sir.

Q

Are you aware or do you know Section 21 of the Prohibited Drugs Law?

A

Yes, sir.

Q

And of course, you will agree with me that the physical inventory shall be made at the place where the items were confiscated and/or seized, is it not?

A

Yes, sir.

Q

It did not say that if there are, at any rate reasons, you will not make it there?

A

Yes, sir.

Q

It is very strict in saying that such items confiscated shall be inventoried at the place where they were confiscated, is it not?

A

It depends upon the situation, sir.

Q

But you know that there is a law on that matter?

A

Yes, sir because I came from PDEA.

Q

And the law says that it is to be marked or inventoried in the place where they were confiscated?

A

Yes, sir.

Q

Likewise, the law requires the photographing, is it not?

A

Yes, sir

Q

There was no photographs [sic] taken?

A

None sir, because that was the instruction of our team leader?

Q

And you followed that?

A

Yes, sir.

Q

You did not follow Section 21 ?

A

The lawyer from PDEA informed us that it is okay to bring the matter to the police station, sir.[31] (Emphasis ours)

Section 21, paragraph 1 of RA 9165 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. Further, 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 that the IRR allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. 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. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses.

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

Here, the buy-bust team utterly failed to comply with the foregoing requirements.

To start with, no photographs of the seized drugs were taken at the place of seizure or at the police station where the inventory was conducted. To be sure, the taking of photographs of the seized drugs is not a menial requirement that can be easily dispensed with. Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and integrity of the recovered items are preserved.

Neither were the inventory and marking of the alleged seized items in this case done in the presence of accused Musor. There was no justifiable ground offered by the prosecution on why the marking was not done in his presence. The absence of the accused in the marking and inventory of the alleged seized items and the lack of photographing as required by law without justifiable ground would open the alleged seized items to tampering, alteration or even planting of evidence against him. Thus, the integrity and evidentiary value of the alleged seized items were not preserved by the apprehending team.

More importantly, there was no compliance with the three-witness rule. Based on the narrations of PO2 Bautista, not one of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly seized from Musor. They were only present during the conduct of inventory in the police station. There was also no explanation as to their absence during the apprehension and their belated appearance at the police station.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory, is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,^[32] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*^[33], 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 sachet that were evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.[34]

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation." [35] (Emphasis in the original)

It is important to point out that the buy-bust team, most especially, PO2 Bautista, as a former PDEA officer, knew that the presence of the three witnesses is required at the time of the warrantless arrest. However, they only secured the presence of the required witnesses at the police station. Moreover, there were only two witnesses present – a barangay official and a media representative, when the law explicitly requires three witnesses. Neither did the police officers nor the prosecution – during the trial – offer any explanation for their deviation from the law.

In addition, the explanation of PO2 Bautista that they could not conduct the physical inventory and photographing of the seized drugs at the place where Musor was apprehended because the place was dark and there were other people drinking is nothing but a flimsy and hollow excuse. The mere allegation that the appellant's arrest could draw unpredictable reactions to the bar-goers is not a sufficient reason for the buy-bust team to deviate from the requirements of Section 21.[36]

It bears stressing that the prosecution has the burden of (1) proving its compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court en banc unanimously held in the recent case of *People v. Lim*: [37]

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[38] (Underscoring added, emphasis omitted)

In this case, none of the abovementioned reasons is present. The practice of police operatives of not bringing to

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the buy-bust 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 saving clause does not apply to this case.

Section 21 (a) of the IRR of RA 9165 provides 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." For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.[39] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the corpus delicti had been compromised.[40] As the Court explained in *People v. Reyes*:[41]

Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the corpus delicti. With the chain of custody having been compromised, the accused deserves acquittal.[42] (Emphasis supplied)

Here, none of the requirements for the saving clause to be triggered is present:

First, the prosecution did not even concede that there were lapses in the conduct of the buy-bust operation. Also, no explanation was offered as to the absence of the three witnesses at the place and time of seizure, or as to the failure to photograph the confiscated items immediately after seizure or during inventory in the presence of the insulating witnesses. It must be noted that the requirements under Section 21 are not unknown to the buy-bust team, who are presumed to be knowledgeable of the law demanding the preservation of the links in the chain of custody.[43] They are dutybound to fully comply with the requirements thereof, and if their compliance is not full, they should at least have the readiness to explain the reason for the step or steps omitted from such compliance.[44]

Second, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. Their explanation — that there might be a commotion since the place was very dark and there were plenty of persons drinking at the place — is hollow and not worthy of belief. They did not even state that their safety would be threatened by an immediate retaliatory action of the accused or any person/s acting for and in his behalf if the inventory and photographing of the seized drugs were done in the place of apprehension.[45]

The integrity and evidentiary value of the corpus delicti have thus been compromised. In light of this, accused-appellant must perforce be acquitted.

The presumption of innocence of the accused vis-a-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.[46] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[47]

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[48] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[49] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[50]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*[51] that it will not presume to set an a priori basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the corpus delicti of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant Musor.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its Implementing Rules and Regulations, which is fundamental in preserving the integrity and evidentiary value of the corpus delicti. To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[52]

WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated July 25, 2016 of the Court of Appeals, Thirteenth Division (CA) in CA-G.R. CR-HC. No. 07592 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Nader Musor y Acmad is ACQUITTED of the crime charged on the ground of reasonable doubt, and is ORDERED IMMEDIATELY RELEASED from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

immediate implementation. The said Superintendent is ORDERED to REPORT to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

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

[1] See Notice of Appeal dated August 1, 2016; rollo, pp. 17-18.

[2] Id. at 2-16. Penned by Associate Justice Ma. Luis C. Quijano-Padilla, with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan concurring.

[3] CA rollo, pp. 11-18. Penned by Judge Caroline S. Rojas Jaucian.

[4] Records, pp. 283-284. Penned by Judge Victor O. Concepcion.

[5] Rollo, pp. 2-3.

[6] Id. at 3-4.

[7] Id. at 4-5.

[8] Supra note 3.

[9] Id. at 17-18.

[10] Id. at 15-16.

[11] Id. at 16.

[12] Rollo, p. 6.

[13] Supra note 2.

[14] Rollo, p. 16.

[15] Id. at 8.

[16] Id. at 10.

[17] Id.

[18] Id. at 14.

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

[20] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

[21] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

[22] *People v. Guzon*, supra note 20 at 451, citing *People v. Dumaplin*, 700 Phil. 737 (2012).

[23] Id., citing *People v. Remigio*, 700 Phil. 452 (2012).

[24] The said section reads as follows:

Section. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[25] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[26] IRR of RA 9165, Art. II, Sec. 21 (a).

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

[28] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[29] TSN dated October 2, 2013, p. 7.

[30] *Id.* at 8.

[31] *Id.* at 15-16.

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

[33] 736 Phil. 749 (2014).

[34] *Id.* at 764.

[35] *People v. Tomawis*, *supra* note 32 at 11-12.

[36] TSN dated October 2, 2013, p. 8.

[37] G.R. No. 231989, September 4, 2018.

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

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

[40] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[41] 797 Phil. 671 (2016).

[42] *Id.* at 690.

[43] *People v. Geronimo*, G.R. No. 180447, August 23, 2017, p. 8.

[44] Id.

[45] *People v. Lim*, supra note 37 at 11-12.

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

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

[48] *People v. Mendoza*, 736 Phil. 749, 769 (2014).

[49] Id. at 770.

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

[51] 393 Phil. 68, 133 (2000).

[52] See *People v. Jugo*, supra note 28 at 10.

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