

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ANGEL ANGELES Y ARIMBUYUTAN, ACCUSED-APPELLANT.

G.R. No. 237355. November 21, 2018

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CAGUIOA, J:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Angel Angeles y Arimbuyutan (accused-appellant) assailing the Decision[2] dated October 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08683, which affirmed the Decision[3] dated May 30, 2016 of the Regional Trial Court, Caloocan City, Branch 120 (RTC) in Criminal Case Nos. C-90948 and C-90949, finding the accused-appellant guilty beyond reasonable doubt of violating Sections 5 and 15, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[4] as amended.

The Facts

Two (2) Informations were filed against the accused-appellant in this case, the accusatory portions of which read as follows:

Criminal Case No. C-90948

That on or about the 1[st] day of November, 2013 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wil[l]fully, unlawfully and feloniously sell and deliver to PO1 ALDRIN ENGRACIA, who posed as buyer, Two (2) small heat-sealed transparent plastic sachets each later marked (ANGELES/ENGRACIA-1(BUY BUST)w/signature) & (ANGELES/ENGRACIA-2(BUY BUST)w/signature) containing METHAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.10 gram & 0.11 gram, which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, and knowing the same to be such.

CONTRARY TO LAW.[5]

Criminal Case No. C-90949

That on or about the 1[st] day of November 2013 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously use METHAMPHETAMINE HYDROCHLORIDE (Shabu), knowing the same to be such, and when subjected to drug test and confirmatory examination, gave POSITIVE result to the tests for the presence of Methamphetamine Hydrochloride, both a dangerous drugs (sic), in gross violation of the above cited law.

CONTRARY TO LAW.[6]

Upon arraignment, accused-appellant pleaded not guilty to both offenses. Thereafter, pre-trial and joint trial on the cases ensued.[7] The prosecution's version, as summarized in its Brief for Plaintiff-Appellee,[8] is as follows:

On October 31, 2013, at around 5 o'clock in the afternoon, PO1 Engracia, per instruction of the Chief of the

Station Anti-Illegal Drugs-Special Operation Task Group, Caloocan City Police Station (SAID-SOTG, CCPS), contacted through a mobile phone an informant at Bagong Barrio, Caloocan City to confirm the text message of a concerned citizen as regards the illegal-drug selling activity of an alias "Panget" at Talipapa, Barangay 164, Baesa, Caloocan City.

Immediately, said informant went to the office of the SAID-SOTG, CCPS and confirmed to PO1 Engracia that alias "Panget" was indeed engaged in selling illegal drugs. Thus, a buy-bust team headed by PO2 Gilbert Gammad and composed of PO1 Engracia, PO2 Gagarin, SPO1 Alberto Valentino and PO1 Joseph Inocencio was formed for the apprehension of alias "Panget".

On November 1, 2013, at around 3 o'clock in the afternoon, the buy-bust team submitted to the Philippine Drug Enforcement Agency (PDEA) a Pre-Operation Report and a Coordination Form. A briefing for the buy-bust operation was then conducted.

During the briefing, PO1 Engracia was tasked to act as poseur-buyer and was provided with a marked Five Hundred Peso (Php500.00) bill, with serial number RT468072, as buy-bust money. PO1 Engracia marked the same with "AE" on the left side thereof. Thereafter, the buy-bust team, together with the informant, went to Talipapa, Barangay 164, Baesa, Caloocan City for a final briefing. Thereat, the informant left the buy-bust team to know the exact location of alias "Panget". After a while, the informant returned and accompanied PO1 Engracia to the exact location of alias "Panget". The other members of the buy-bust team followed.

Upon arrival at Road 11, GSIS Village, Talipapa, Barangay 164, Baesa, Caloocan City, the informant and PO1 Engracia approached a male person, who was later identified as appellant Angel Angeles. The informant said to appellant, "Pare, kukuha itong kumpare ko." Appellant answered, "Ilan?" Thus, PO1 Engracia answered, "Limang Daan lang brod, " and handed to appellant the buy-bust money. Afterwards, appellant said, "Sandali lang, " left and entered an alley. After a while, appellant returned and handed to PO1 Engracia two (2) plastic sachets, containing white crystalline substance believed to be shabu, in exchange for the money that PO1 Engracia gave him.

PO1 Engracia then touched his nape as a pre-arranged signal that the sale was already consummated. Upon seeing the other members of the buy-bust team approaching, PO1 Engracia held appellant and introduced himself as a police officer. Thereafter, PO1 Engracia recovered the buy-bust money from the right pocket of the long pants of appellant. When the other operatives arrived, PO1 Engracia marked the two (2) plastic sachets bought from appellant with "(ANGELES/ENGRACIA-1 (BUY BUST))" & "ANGELES/ENGRACIA-2 (BUY BUST)" and affixed his signatures thereon. PO2 Gagarin informed appellant of his violation and Constitutional Rights. Subsequently, appellant, the subject evidence and the buy-bust money were brought to the Office of the SAID-SOTG, CCPS.

At the said office, PO1 Engracia turned over the appellant, the buy-bust money and the subject evidence to the duty investigator, PO1 Pascual. An inventory of the confiscated items was then conducted. In the course of the turn-over and inventory, PO1 Engracia was given an Evidence Acknowledgment Receipt and was made to sign the Chain of Custody Form and Physical Inventory of Evidence Form. Photographs of the appellant and the subject evidence were likewise taken. Thereafter, PO1 Pascual placed the subject evidence in a self-sealing plastic sachet, which he marked with "SAID-SOTG EVIDENCE 11-01-13" and signed it.

Thereafter, PO1 Pascual brought appellant and the subject evidence to the NPD-CLO for drug test and laboratory examination, respectively. Said examinations yielded positive results for the presence of Methamphetamine Hydrochloride, otherwise known as "shabu", a dangerous drug.[9]

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

Angeles vehemently denied the accusations against him. He claimed that at around 4:00 in the afternoon of November 1, 2013, he was sleeping when five (5) armed men suddenly entered his house at No. 12, 11

Talipapa, Caloocan City. Upon confirming that he is "Angel Angeles", two (2) men frisked him and accused him of being "one of those who sell shabu". Afterwards, Angeles was brought outside of his room while one (1) of the armed men took his pouch containing P200.00-bill, tweezer, and lighter. He was taken to the Station Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG) of Caloocan City where he was frisked anew and shown money and shabu. He voluntarily submitted himself to medical examination.[10]

Ruling of the RTC

After trial on the merits, in its Decision dated May 30, 2016[11] the RTC convicted the accused-appellant of the crimes charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the Court finds and so holds that:

(1)

In Criminal Case No. C-90948, accused Angel Angeles y Arimbuyutan, GUILTY beyond reasonable doubt for Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposes upon him the penalty of LIFE IMPRISONMENT, taking into account the enactment of Republic Act No. 9346, and a fine of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00).

(2)

In Criminal Case No. C-90949, accused Angel Angeles y Arimbuyutan, GUILTY beyond reasonable doubt for Violation of Section 15, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposes upon him the penalty of six (06) months rehabilitation in a government rehabilitation center to be effected during the service of his prison term.

x x x x

SO ORDERED.[12]

The RTC ruled that the evidence on record was sufficient to pronounce a verdict of conviction against the accused-appellant.[13] It held that the prosecution was able to establish all the elements of the crimes charged. As to the charge of sale of dangerous drugs, the RTC stated that the prosecution was able to establish (1) the identities of the buyer and seller, viz., the poseur-buyer PO1 Aldrin Engracia (PO1 Engracia), and the accused-appellant as the seller, with the two heat-sealed plastic sachets containing shabu as the object of the sale; and (2) the delivery of the thing sold and the receipt of the payment.[14]

The RTC also recognized that nothing in the records indicates that the procedure for the conduct of the required physical inventory, outlined in Section 21, RA 9165, was complied with. Despite recognizing this, however, it stated that the non-compliance, by itself, did not invalidate the seizure of the dangerous drugs. The RTC held that despite the non-compliance, the integrity and evidentiary value of the seized items were nevertheless preserved. It reasoned that it was incumbent upon the defense to show that the evidence was tampered or meddled with to overcome the presumption of regularity extended to the police officers – which burden the defense failed to discharge.[15]

The RTC likewise convicted the accused-appellant on the charge for violation of Section 15 of RA 9165, or for use of dangerous drugs. It noted that the elements of a violation of Section 15, namely: (1) the accused was arrested; (2) the accused was subjected to a drug test; and (3) the confirmatory test shows that the accused used a dangerous drug, were all complied with.[16]

Aggrieved, the accused-appellant appealed to the CA.

Ruling of the CA

In the questioned Decision[17] dated October 30, 2017, the CA affirmed the RTC's conviction of the accused-appellant, holding that the prosecution was able to prove the elements of the crimes charged. Particular to the charge of illegal sale of dangerous drugs, the CA upheld the finding that the prosecution was able to establish (1) the identity of the buyer, as well as the seller, the object, and the consideration of the sale; (2) the delivery of the thing sold and the payment therefor.[18] The CA gave credence to the testimony of the prosecution witnesses to establish the integrity and evidentiary value of the dangerous drugs seized.

As regards compliance with Section 21 of RA 9165, the CA held that the defense's failure to question the police officers, on cross-examination, regarding their alleged non-compliance with Section 21, amounts to a waiver and thus could no longer be a ground for his acquittal. The CA added that even if it were to consider the supposed non-compliance, the result would nevertheless remain the same because

this slight infraction or nominal deviation would not exonerate him from liability. The court is not always looking for the strict step-by-step adherence to the procedural requirements. What is important is to ensure the preservation of the integrity and the evidentiary value of the seized item as this would determine the guilt or innocence of the accused.[19]

In a similar way, the CA also upheld the accused-appellant's conviction for violation of Section 15 of RA 9165, for the same reason that the prosecution sufficiently established the elements of the crime charged.

Hence, the instant appeal.

Issue

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

The Court's Ruling

The appeal is meritorious. The Court acquits the accused-appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

The accused-appellant was charged with the crimes of illegal sale and illegal use of dangerous drugs, defined and penalized under Sections 5 and 15 of RA 9165, respectively. With regard to the charge of illegal sale of dangerous drugs, in order for a person to be convicted of the said crime, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[20]

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.[21] 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,[22] the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In contrast to the CA's pronouncement, therefore, the Court should look into whether the police officers involved in each case adhered to the step-by-step procedure outlined in Section 21 of RA 9165.

This is because, in all drugs cases, 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.[23] 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.[24]

In this connection, Section 21, RA 9165,[25] 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 must be inventoried and photographed immediately after seizure or confiscation; (2) and 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.[26]

Section 21, 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 allow 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.[27] In this connection, 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. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true, as pointed out by both the RTC and the CA, 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 void and invalid. However, this is with the caveat 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.[28] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[29]

In the present case, none of the three required witnesses was present at the time of seizure and apprehension and even during the conduct of the inventory. As PO1 Engracia, the poseur-buyer himself, testified only on the buy-bust team's prior coordination with the Philippine Drug Enforcement Agency (PDEA) without any mention of the three required witnesses:

Q

You mentioned that you used Php500.00 peso bill, is that correct?

A

Yes, Ma'am.

Q

And is it not a fact that you placed only the markings after you arrested the accused, Mr. Witness?

A

No, Ma'am. I marked it during our meeting when I was designated to act as poseur buyer, Ma'am.

Q

You did not coordinate prior to this alleged buy-bust operation, is that correct?

A

We have coordinated with the PDEA, Ma'am.[30] (Emphasis supplied)

The absence of the required witnesses was likewise acknowledged by both the RTC[31] and the CA,[32] with both courts justifying the non-compliance as a matter that did not affect the integrity and evidentiary value of the seized items. As the RTC pertinently reasoned:

In these cases, although nothing appears in the records that the conduct of the required physical inventory of the subject evidence and the taking of a photograph thereof were made in the presence of an elected public official and a representative of the National Prosecution Service, under the same proviso, non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizure of and custody over the said item, for as long as the integrity and evidentiary value of the same are properly preserved by the apprehending officers.[33]

The prosecution did not present any other witness who offered a version different from the above. In fact, in their Brief for Plaintiff-Appellee, the police officers themselves impliedly admitted to committing the following irregularities: (1) conducting the inventory in the police station, instead at the place of the arrest, without offering an explanation as to why it was not practicable that the same be done immediately at the place of the arrest; and (2) conducting the inventory without any of the required witnesses, namely a representative from the DOJ, a media representative, and an elective official.[34] In this regard, there was also no explanation as to why none of the three required witness was present in the buy-bust operation conducted against Angeles. The prosecution did not also address the issue in their pleadings, and the RTC and the CA instead had to rely only on the presumption that police officers performed their functions in the regular manner to support accused-appellant's conviction.

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

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*[36], without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet[s] that were evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.[37]

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." [38] (Emphasis in the original)

It is important to point out that the apprehending team in this case had more than ample time to comply with the requirements established by law. By its own version of the facts, as previously narrated, it received the information from its confidential informant at 5:00 p.m. on October 31, 2013, and it executed the buy-bust operation at 3:00 p.m. the following day. It thus had around 22 hours to secure the attendance of the required witnesses. It even had time, as PO1 Engracia himself testified, to coordinate with the PDEA before the operation was actually conducted. [39] The officers, therefore, could have complied with the requirements of the law had they intended to. However, the apprehending officers in this case did not exert even the slightest of efforts to secure the attendance of any of the three required witnesses. Worse, neither the police officers nor the prosecution — during the trial — offered any explanation for the deviation from the law.

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 held in the recent case of *People v. Lim*: [40]

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. [41] (Underscoring added, emphasis omitted)

In *People v. Umipang* [42] the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witnesses before the buy-bust operation was executed. In the said case, the Court held:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not per se render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the barangay chairperson or any member of the barangay council. There is no indication that they contacted other elected public officials. Neither do the records show

whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21 (1) of R.A. 9165. A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21 (1) of R.A. 9165, or that there was a justifiable ground for failing to do so.[43] (Emphasis and underscoring supplied)

In this connection, it was error for both the RTC and the CA to convict the accused-appellant by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[44] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[45] As the Court, in *People v. Catalan*,^[46] reminded the lower courts:

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

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

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

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[47] (Emphasis supplied)

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. What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual,^[48] the conduct of buy-bust operations requires the following:

Anti-Drug Operational Procedures

Chapter V. Specific Rules

x x x x

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

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

- Record time of jump-off in unit's logbook;
- Alertness and security shall at all times be observed;
- Actual and timely coordination with the nearest PNP territorial units must be made;
- Area security and dragnet or pursuit operation must be provided;
- Use of necessary and reasonable force only in case of suspect's resistance:
- If buy-bust money is dusted with ultra violet powder make sure that suspect gel hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
- In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
- Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms reach;
- After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
- Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
- Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
- Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
- The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;
- Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and
- Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.[49] (Emphasis supplied)

The Court has ruled in *People v. Zheng Bai Hui*[50] 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.

At this juncture, it is well to point out that the CA grievously erred in holding that the defense's failure to ask probing questions, on cross-examination, to the police officers regarding their compliance with Section 21 amounts to a waiver. This is erroneous for it overlooks the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[51] This presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases; has proven the guilt of the accused beyond reasonable doubt;[52] and has proven that each and every element of the crime charged in the information warrants a finding of guilt for that crime or for any other crime

necessarily included therein.[53] Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that this burden of proof never shifts. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In cases involving dangerous drugs, in particular, the prosecution therefore always has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:^[54]

We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. The State must fully establish that for us. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.^[55] (Emphasis supplied)

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, whether the defense asked probing questions to the police officers as to their compliance with Section 21. This is so simply because it bears no burden to do the same, as the duty to put forth the said evidence rests solely on the prosecution.

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do so within the bounds of the law.^[56] Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, "planting" or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of shabu that were evidence herein of the corpus delicti. Thus, this adversely affected the trustworthiness of the incrimination of the accused-appellant. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.^[57]

Concededly, Section 21 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.^[58] In this case, the prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165.

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellant as the integrity and evidentiary value of the corpus delicti had been compromised.^[59] As the Court explained in *People v. Reyes*:^[60]

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.[61] (Emphasis supplied)

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the corpus delicti have thus been compromised. In light of this, the accused-appellant must perforce be acquitted as regards the charge of violation of Section 5, RA 9165.

With the acquittal of the accused-appellant in relation to the charge of violation of Section 5, RA 9165, it follows then that he should likewise be acquitted as to the charge of violation of Section 15, RA 9165.

The case for violation of Section 15, RA 9165 was filed because the accused-appellant was found positive for use of methamphetamine hydrochloride after he was subjected to a drug test following his arrest. This was done in compliance with Section 38, RA 9165 which states:

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

The accused-appellant was thus subjected to a drug test as a result of his apprehension which, as already illustrated, was conducted in violation of Section 21, RA 9165 – a rule that is a matter of substantive law and cannot be brushed aside as a simple procedural technicality.[62] Section 21, RA 9165 is a statutory exclusionary rule of evidence, bearing in mind that, under the Rules of Court, "evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules." [63]

The results of the drug test cannot thus be used against the accused-appellant for it is considered, under the law, as "fruit of the poisonous tree." In the case of *People v. Alicando*, [64] it was explained thus:

According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained.[65] (Emphasis supplied)

Applied in the present case, since the apprehension of the accused-appellant by the police officers was illegal for

non-compliance with the procedure provided by Section 21, RA 9165, it therefore follows that the drug test conducted on him was likewise illegal for it is an indirect result of his arrest. Otherwise stated, if the accused-appellant was not arrested in the first place, he would not have been subjected to a drug test because Section 38 refers to "any person apprehended or arrested for violating the provisions of this Act." As the accused-appellant was not proved to have violated any of the provisions of RA 9165, then the drug test conducted on him has no leg to stand on. The accused-appellant must perforce be also acquitted of the charge of violating Section 15, RA 9165.

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.[66]

WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated October 30, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08683 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Angel Angeles y Arimbuyutan is ACQUITTED of the crimes charged on the ground of reasonable doubt, and is ORDERED IMMEDIATELY RELEASED from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be 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, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.

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

[1] See Notice of Appeal dated November 10, 2017; rollo, pp. 16-17.

[2] Id. at 2-15. Penned by Associate Justice Pedro B. Corales with Associate Justices Japar B. Dimaampao and Amy C. Lazaro-Javier concurring.

[3] CA rollo, pp. 41-54. Penned by Judge Aurelio R. Ralar, Jr.

[4] Titled "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," approved on June 7, 2002.

[5] Records, p. 1; rollo, p. 3.

[6] Records, p. 20; rollo, p. 3.

[7] Rollo, pp. 3-4.

[8] CA rollo, pp. 76-94.

[9] CA rollo, pp. 78-81.

[10] Rollo, p. 7.

[11] Supra note 3.

[12] CA rollo, p. 54.

[13] Id. at 49.

[14] Id. at 50-51.

[15] Id. at 52-53.

[16] Id. at 53.

[17] Supra note 2.

[18] Rollo, p. 10.

[19] Id. at 13.

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

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

[22] *People v. Mantalaba*, 669 Phil. 461, 471 (2013).

[23] *People v. Guzon*, supra note 21 at 451, citing *People v. Dumaplin*, 700 Phil. 737 (2012).

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

[25] The said section reads as follows:

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.

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

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

[28] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, p. 17.

[29] *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. 1; *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).

[30] TSN dated September 30, 2014, p. 10.

[31] CA rollo, p. 52.

[32] Rollo, p. 13.

[33] CA rollo, p. 52.

[34] Id. at 80.

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

[36] 736 Phil. 749 (2014).

[37] Id. at 764.

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

[39] Supra note 30.

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

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

[42] 686 Phil. 1024 (2012).

[43] Id. at 1052-1053.

[44] *People v. Mendoza*, 736 Phil. 749, 770 (2014).

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

[46] 699 Phil. 603 (2012).

[47] Id. at 621.

[48] Philippine National Police Drug Enforcement Manual, PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

[49] Id.

[50] 393 Phil. 68, 133 (2000).

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

[52] The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (Rule 133, Sec. 2)

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

- [54] 745 Phil. 237 (2014).
- [55] Id. at 250-251.
- [56] People v. Ramos, 791 Phil. 162, 175 (2016).
- [57] People v. Mendoza, 736 Phil. 749, 764 (2014).
- [58] See People v. Alagarme, 754 Phil. 449, 461 (2015).
- [59] See People v. Sumili, 753 Phil. 342, 350 (2015).
- [60] 797 Phil. 671 (2016).
- [61] Id. at 690.
- [62] People v. Año, supra note 29 at 7.
- [63] RULES OF COURT, Rule 128, Sec. 3.
- [64] 321 Phil. 656 (1995).
- [65] Id. at 690.
- [66] See People v. Jugo, G.R. No. 231792, January 29, 2018, p. 10.

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