

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DENNIS SARABIA Y REYES, ACCUSED-APPELLANT.*G.R. No. 243190. August 28, 2019*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-243190/>**CAGUIOA, J:****The Case**

Before the Court is an ordinary appeal[1] filed by accused-appellant Dennis Sarabia y Reyes (accused-appellant Sarabia), assailing the Decision[2] dated April 30, 2018 (assailed Decision) of the Court of Appeals[3] (CA) in CA-G.R. CR-HC No. 08785, which affirmed the Decision[4] dated September 30, 2016 rendered by the Regional Trial Court of Laoag City, Branch 13 (RTC) in Criminal Case Nos. 15573 and 15574, entitled *People of the Philippines v. Dennis Sarabia y Reyes*, finding accused-appellant Sarabia guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts and Antecedent Proceedings

For allegedly selling a plastic sachet containing 0.0392 gram of methamphetamine hydrochloride, commonly called shabu, and for allegedly possessing six plastic sachets containing 3.219 grams of the same substance in a buy-bust operation conducted by the Philippine Drug Enforcement Agency (PDEA) at Jose P. Rizal Street, Barangay 1, Laoag City, accused-appellant Sarabia was charged in two separate Informations[6] for violating Sections 5 and 11 of RA 9165.

The Information for Section 5 of RA 9165 reads as follows:

That on or about the 30[th] day of June, 2013, in the City of Laoag, Philippines, and within the Jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully, and feloniously sell and deliver to the PDEA agent/poseur buyer one (1) small heat sealed transparent plastic sachet containing alleged methamphetamine hydrochloride commonly known as "shabu", a dangerous drug, weighing 0.0392 grams (sic), without any license or authority to sell the same, in violation of the aforesaid law.

CONTRARY TO LAW.[7]

The Information for Section 11 of RA 9165 reads as follows:

That on or about the 30[th] day of June, 2013, in the City of Laoag, Philippines, and within the Jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully, and feloniously have in his possession, control and custody six (6) plastic plastic (sic) sachet containing methamphetamine hydrochloride commonly known as "shabu", a dangerous drug, with aggregate weighing (sic) 3.219[7a] grams, without any license or authority to sell the same in violation of the aforesaid law.

CONTRARY TO LAW.[8]

As gathered from the testimonies of the prosecution's witnesses presented during the trial, the prosecution's

version of events is as follows:

"[A]t around 7:00 o'clock in the evening of June 30, 2013, a male confidential informant (CI) went to the temporary office of the PDEA-INSET located in Brgy. 13, San Nicolas, Ilocos Norte and reported the illegal activity of the accused, a resident of Brgy. 12, Laoag City. After interviewing the [CI] who claimed that the accused had trust and confidence in him and had asked him to look for buyers of shabu for a good commission, IO1 Mirindato informed their Team Leader SO2 Annabelle Cabarles who then told him to ask the CI to call the accused and order from him shabu worth P1,000.00. Upon being told, the CI called the accused. IO1 Mirindato heard the CI telling, "pare, may katransaction ako, isang libo", to which the man on the other end of the line whom the CI identified to be the accused, said "okay, mamaya magkita tayo 10:30 kasama yang katransaction natin sa waiting shed malapit sa Partas Terminal". IO1 Mirindato thereupon relayed it to their Team Leader who then conducted a briefing for the conduct of a buy busy operation. She assigned IO1 Mirindato to act as poseur buyer, IO1 Bahiyan as arresting officer and she together with IO1 Nickson Acosta and IO1 Karen Benmaso as perimeter back up who will help in the arrest of the accused just in case. The team agreed that the pre-arranged signal to indicate the consummation of the sale will be IO1 Mirindato's scratching his head.

After the briefing, the team prepared the materials needed in the operation. IO1 Mirindato marked the buy bust money consisting of a P1,000.00 bill with his initials "SPM" below the 1000 figure on the right lower portion of the bill. He also prepared their camera and some inventory forms to add to what they have already have in their kit. Also, SO2 Cabarles called their Regional Office to coordinate the operation.

At around 10:20 o'clock that morning, when all was ready, the team proceeded to the agreed place of transaction in their service vehicle and a private car. When they were already within the vicinity of the Partas (Bus) Terminal which was located at Jose P. Rizal Street in Brgy. 1, Laoag City, IO1 Mirindato and the CI alighted from the Nissan sedan in which they rode and walked to the waiting shed located about few meters away past the gate of the terminal. The rest of the team also alighted and positioned themselves strategically, with IO1 Bahiyan posting himself at the gate of the bus terminal. The team thereafter waited as the accused was not still at the place, telling the CI who called him, to just wait as he was still doing something.

A few minutes later, a man driving a tricycle arrived in front of the waiting shed. The CI told IO1 Mirindato that he is their subject and both of them then approached the accused. After a short introduction, the transaction then took place. After the exchange between the accused and IO1 Mirindato, the latter executed the pre-arranged signal and the later (sic) stopped and informed his authority to the accused who was already astride the motorcycle of his tricycle and was starting its engine. A few moments later as IO1 Mirindato took hold of the hand of the accused who was unable to react as he appeared shocked, IO1 Bahiyan arrived at the place approaching from the back of the accused. He ordered the accused to alight and brought him to the waiting shed where IO1 Mirindato body searched him and was able to recover from his possession the buy bust money, a cellphone and six more plastic sachets containing white crystalline substance. As the members of the back[-]up had also then arrived, they secured the place and SO2 Cabarles herself called the Laoag City Police Station for assistance. She also called barangay officials and media personalities to come and witness the inventory of the seized items. In the meantime as they waited for the witnesses, the team tagged the confiscated plastic sachets and marked them.

Sometime later when barangay officials including Barangay Chairman Darwin Domingo of Brgy. 1, Laoag City, and members of the media arrived, the seized items were inventoried. The witnesses thereafter signed the Certificate of Inventory, after which the accused and the seized items were taken to the temporary office of the PDEA in San [N]icolas, Ilocos Norte where other documents such as the booking sheet and letter request for laboratory examination were prepared. Thereafter, together with the said letter request, the plastic sachets containing white crystalline substance were submitted to the PNP Ilocos Norte Provincial Crime Laboratory Office where they were examined and found to be methamphetamine hydrochloride."[9]

On his part, accused-appellant Sarabia vehemently denied the prosecution's version of the incident and alleged the

following:

"In his defense, accused Dennis Sarabia, 51 years old when he testified, married and who claimed to be a tricycle driver, belied the accusation against him. Basically, he claimed that he was just arrested even as he did not sell any shabu in a buy bust operation. He narrated that at 10:00 o'clock that evening of June 30, 2013, he was at Discolandia, a place known to be a red light district located in Brgy. 1, Laoag City, waiting for passengers. He was later able to get a passenger working at the AP Club whom he conveyed to Jollibee and back to his place of work. As he returned to the same place along Bonifacio Street where he usually waited for passengers, he was able to get one of his regular passengers who was selling slippers who wanted to be conveyed to the (jeepney) terminal for Solsona, Ilocos Norte. As the passenger had already boarded, he saw two men coming from the west. Since he only had one at that time, he waved at the two men hoping that they were also passengers. As they however met and as he had already stopped his tricycle, the two men, one of whom he identified as IO1 Bahiyan and the other he described to be with a moustache, just grabbed his two hands. He resisted and asked why but they just handcuffed him and sent away his passenger telling him to get off the tricycle if he did not like to be implicated. As his passenger got off, he was then pushed inside the tricycle which the man with a moustache then drove while another man he identified to be IO1 Mirindato boarded the tricycle and sat beside him. He asked IO1 Mirindato what his fault was and why they handcuffed and arrested him but the agent just told him to keep quiet and to just go with them and that they will take care of him. He was then brought to P. Gomez Street where he was made to alight. There, he was frisked by IO1 Mirindato who took his cellphone and his earnings amounting to P450.00. He was again later boarded in the tricycle and was brought to Brgy. 2, San Nicolas, Ilocos Norte where, after the men were finished conversing in the phone, he was again frisked by the man [with the] moustache who took his wallet and its contents that included his money amounting to P1,700.00. After that, as he heard the two men talking about it, they brought him back to Laoag City at Rizal Street at the waiting shed near Partas. As he was made to sit on one corner of the waiting shed, he observed IO1 Mirindato holding a folder and later as if writing and then cutting something like plastic. There were also people including barangay officials, a cameraman and police officers who arrived. Afterwards, he was brought to the Laoag City Police Station where the men who arrested him wanted to leave him but the policemen they talked to refused telling them that they should take charge of him as they were the ones who arrested him. They therefore again brought him to Brgy. 2, San Nicolas." [10]

The Ruling of the RTC

In its Decision dated September 30, 2016, the RTC found accused-appellant Sarabia guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.

The dispositive portion of the RTC's Decision reads:

WHEREFORE, the Court hereby renders judgment finding accused Dennis Sarabia y Reyes GUILTY beyond reasonable doubt as charged in these cases and is therefore sentenced to suffer as follows:

- In Criminal Case No. 15573 for illegal sale of shabu, to suffer the penalty of Life Imprisonment and to pay a fine of P2,000,000.00; and
- In Criminal Case No. 15574 for illegal possession of the six plastic sachets of shabu determined to have an aggregate weight of 3.219 grams, to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00).

The contrabands subject hereof are confiscated for proper disposal as the law prescribes.

SO ORDERED.[11]

In sum, the RTC believed that the prosecution was able to fulfill its burden of proof in establishing all the

essential elements of illegal sale and possession of dangerous drugs under Sections 5 and 11 of RA 9165.

Insisting on his innocence, accused-appellant Sarabia appealed before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Sarabia. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the Appeal filed by Dennis Sarabia y Reyes on 7 October 2016 is DENIED. The Decision rendered by the Regional Trial Court, Branch 13, Laoag City, First Judicial Region on 30 September 2016 in Criminal Case Nos. 15573 and 15574 is AFFIRMED.

SO ORDERED.[12]

The CA agreed with the RTC in finding that there is, in the instant case, "concurrence of the elements of the crimes of Sale of Dangerous Drugs and Possession of Dangerous Drugs, the presentation of the evidence of the corpus delicti in court, and the proper preservation of the integrity and the evidentiary value of the seized illicit substances." [13]

Hence, this appeal before the Court of Last Resort.

Issue

For the Court's resolution is the issue of whether accused-appellant Sarabia is guilty beyond reasonable doubt for the crimes charged.

The Court's Ruling

The foregoing question is answered in the negative. Accused-appellant Sarabia's guilt was not proven beyond reasonable doubt. Therefore, accused-appellant Sarabia is acquitted of the crimes charged.

The essential elements of illegal sale and possession of dangerous drugs

Accused-appellant Sarabia was charged with the crimes of illegal sale and possession of dangerous drugs, defined and penalized under Sections 5 and 11, respectively, 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 is required to 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.[14]

On the other hand, illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[15]

Strict compliance of the chain of custody rule in illegal drugs cases

In cases involving dangerous drugs, the State bears not only the burden of proving the aforesaid 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.[16]

Therefore, considering that the very corpus delicti is the drug specimen itself, establishing the integrity of the specimen is imperative. Hence, compliance with the chain of custody rule is crucial in establishing accused-appellant Sarabia's guilt beyond reasonable doubt.

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. This would include testimony on every link in the chain, from the moment the item was picked up to the time it was offered in 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.[17]

As applied in illegal drugs cases, 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 until their destruction.[18]

In particular, the following links should be established in the chain of custody of the confiscated item: first, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[19]

The chain of custody rule is crucial, 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 required to make a finding of guilt.[20]

Simply stated, if the chain of custody is broken, the identity, integrity, and evidentiary value of the corpus delicti are put in serious doubt. Consequently, the accused will perforce be acquitted.

The chain of custody is broken, casting doubt as to the corpus delicti of the crimes charged

Applying the foregoing discussion in the instant case, after a careful review of the evidence on record, the Court finds that the prosecution failed to establish an unbroken chain of custody of the allegedly seized drug specimens.

According to the prosecution's version of events, after the buy-bust was conducted, on July 1, 2013, the allegedly seized drug specimens were transmitted by one SPO3 Diosdado C. Mamotos to Police Inspector Amiely Ann L. Navarro (PI Navarro), a forensic chemist of the PNP Crime Laboratory Office, Ilocos Norte. PI Navarro allegedly examined the specimens and thereafter transmitted the same to the evidence custodian, PO3 John Edwin Padayao.

Instead of presenting the witness herself to testify on the transmittal and examination of the allegedly seized drug specimens, the prosecution decided to submit before the RTC a document entitled "Proffer Testimony (Police Inspector Amiely Ann L. Navarro)."[21] The said document, containing the testimony of PI Navarro was executed, not by PI Navarro herself, but by the Assistant City Prosecutor Daryl U. Fajardo (ACP Fajardo).

Upon presentment before the RTC, the admission of this "Proffer Testimony" was vehemently objected to by the defense.[22] Therefore, it was incumbent upon the prosecution to present PI Navarro herself on the witness stand to testify as regards the circumstances of the transmittal and examination of the subject specimens.

Instead, during the trial hearing on September 9, 2016, when PI Navarro was presented by the prosecution, she merely identified the document without testifying as to how the custody of the subject specimens was transmitted to her and the procedures she undertook in examining the subject specimens and maintaining their condition.

The RTC admitted the "Proffer Testimony" and mainly based its factual findings on the examination of the allegedly seized drug specimens based on the said document and not based on any oral testimony or judicial

affidavit executed by the forensic chemist, PI Navarro.

The RTC gravely erred in admitting the "Proffer Testimony," considering that it is hearsay evidence.

It is elementary that a witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception.[23] It goes without saying that the contents of the "Proffer Testimony" executed by ACP Fajardo on the transfer of custody of the subject specimens from the buy-bust team to the forensic chemist and the latter's examination of the said specimens are beyond the personal knowledge of ACP Fajardo.

Jurisprudence has held that documents such as affidavits are generally classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. For this reason, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon.[24]

With more reason should the "Proffer Testimony" be considered hearsay, considering that, worse than an affidavit signed by an affiant-witness, the document was not even executed under the name and signature of PI Navarro. Further, to reiterate, when PI Navarro was presented on the witness stand, she did not offer any testimony as to the circumstances of the transmittal and examination of the subject specimens. Necessarily, the Initial Laboratory Report[25] executed by PI Navarro that was submitted before the RTC as an adjunct to the "Proffer Testimony," which was never identified and authenticated by PI Navarro during the trial, is likewise inadmissible.

Therefore, with the prosecution's testimony on the transmittal of the allegedly seized drug specimens to the forensic chemist, the examination undertaken by the said forensic chemist, and the transmittal of the subject specimens from the latter to the evidence custodian relying mainly on inadmissible evidence, the prosecution's version of events as to the transmittal and examination of the drug specimens has no leg to stand on.

With the transmittal and examination of the subject specimens having no solid evidentiary basis, indubitably, there is serious doubt cast, to say the least, on to the identity, integrity, and evidentiary value of the corpus delicti. Inevitably, the acquittal of accused-appellant Sarabia is warranted.

The strict compliance of Section 21 of RA 9165 and the rationale behind such rule

Aside from the prosecution's failure to satisfactorily establish the chain of custody, the integrity and credibility of the seizure and confiscation of the prosecution's evidence are also put into serious doubt due to the indisputable failure of the authorities to observe the mandatory procedural requirements laid down in Section 21 of RA 9165.

The treatment of the law as to dangerous drugs cases is special and unique, owing to the peculiar nature of the corpus delicti of the crime, which makes the same easily susceptible to manipulation in the hands of the State.

Jurisprudence has held that "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]

Therefore, as the innocence and liberty of the accused are pitted unevenly against the powerful machinery of the State, the law requires the strict observance of certain special rules that provide for procedural safeguards which ensure moral certainty in the conviction of the accused.

These special rules are contained in Section 21 of RA 9165, which, at the time of the incident, mandates the following procedure in the seizure, custody, and disposition of dangerous drugs:

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.[27] (Emphasis supplied)

Meanwhile, the Implementing Rules and Regulations (IRR) of RA 9165 provides additional custody requirements and likewise added a "saving clause" in case of non-compliance with such requirements:

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[.]

Furthermore, under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), specific procedures on the conduct of buy-bust operations are identified, particularly identifying the marking of the drug specimen as an integral part of the physical inventory of the seized evidence:[28]

CHAPTER V

x x x x

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

V. SPECIFIC RULES

x x x x

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

1. Buy-Bust Operation - [I]n the conduct of buy-bust operation, the following are the procedures to be

observed:

- a. Record time of jump-off in unit's logbook;
- b. Alertness and security shall at all times be observed[;]
- c. Actual and timely coordination with the nearest PNP territorial units must be made;
- d. Area security and dragnet or pursuit operation must be provided[;]
- e. Use of necessary and reasonable force only in case of suspect's resistance[;]
- f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
- g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
- h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arm[']s reach;
- i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
- j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
- k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
- l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
- m. The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;
- n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and
- o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.[29]

In sum, in the conduct of buy-bust operations, the law provides that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory, which includes the marking of the evidence, and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team.[30] 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 apprehending team considering that the buy-bust operations are more often than not well-planned activities.

To reiterate, the Court stresses that the aforementioned procedural requirements laid down in Section 21 of RA 9165 and the related administrative issuances are mandatory in nature.

In *People v. Tomawis*,^[31] the Court explained that these requirements are crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence:

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*,^[32] without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able 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 witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."^[33] (Emphasis and underscoring supplied)

Permissible Non-Compliance of Section 21 of RA 9165

Concededly, however, there are instances wherein departure from the aforesaid mandatory procedures are permissible.

Section 21 of the IRR provides that "noncompliance 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."

For this provision to be effective, however, the prosecution must first (1) recognize any lapses on the part of the police officers and (2) be able to justify the same.^[34]

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the corpus delicti would be compromised.^[35]

As the Court explained in *People v. Reyes*:^[36]

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.[37] (Emphasis supplied)

The prosecution failed to both recognize and sufficiently justify the undisputed non-observance of Section 21 of RA 9165

Applying the foregoing discussion in the instant case, it cannot be denied that the authorities failed to observe the mandatory requirements under Section 21 of RA 9165. Worse, the prosecution failed to recognize these lapses and offer sufficient justification to warrant the non-observance of these mandatory rules.

As testified by IO1 Ray Bahiyan (IO1 Bahiyan), a member of the buy-bust team and a key witness of the prosecution, the buy-bust team coordinated only "with the barangay officials and then he called the cameraman of ABS CBN to witness the inventory x x x." [38]

Hence, it is readily admitted by the prosecution that there was no representative of the DOJ present during the inventory.

But more importantly, the marking of the evidence, which is a crucial element of the physical inventory process, was conducted without the presence of any of the required witnesses.

As factually found by the lower courts, "[i]n the meantime as [the buy-bust team] waited for the witnesses, the team tagged the confiscated plastic sachets and marked them." [39]

This was confirmed by the testimony of IO1 Bahiyan on direct examination, unequivocally testifying that the witnesses were called up only when the allegedly seized drug specimens were already marked:

Q

Now, after marking all those specimens, what next happened?

A

Our team leader coordinated with the barangay officials and then he called the cameraman of ABS CBN to witness the inventory, sir x x x" [40] (Underscoring supplied)

The marking of the evidence is an indispensable aspect of the physical inventory process. Marking the seized drug specimen is crucial as it establishes the link between the specimen seized during the buy-bust operation and the specimen that is examined and later presented as evidence during the trial. In short, the marking of the seized specimen is the definitive process undertaken by the authorities to establish the identity of the drug specimen retrieved from the accused. Therefore, with the marking of the evidence being an integral part of the physical inventory, in accordance with Section 21 of RA 9165, the authorities have the duty of securing the presence of the required witnesses during the marking of the allegedly seized plastic sachets.

To reiterate the Court's holding in *People v. Tomawis*, [41] the very essence of requiring the three witnesses during the buy-bust operation is to erase any doubt as to the source, identity, and integrity of the seized drug. Thus, permitting the absence of the required witnesses during the marking of the drug specimen, which is the crucial process in establishing the identity of the specimen, will bring to naught and render nugatory the statutory requirement of securing the presence of the required witnesses. Simply stated, the non-presence of the witnesses during the marking of the subject evidence puts into doubt the identity of the allegedly retrieved drug specimen.

Bearing in mind the serious breach of procedure committed by the buy-bust team in this case, it was incumbent upon the prosecution to, first, recognize and, subsequently, justify the failure of the authorities to procure a representative from the DOJ as witness and secure the presence of the witnesses during the marking of the evidence.

Unfortunately, the records of the instant case reveal that the prosecution neither recognized nor offered any justifiable reason for the aforesaid breaches of the mandatory rules of procedure required under Section 21 of RA 9165.

Therefore, premises considered, the Court finds that the integrity and evidentiary value of the corpus delicti have been seriously compromised due to the failure of the prosecution to preserve an unbroken chain of custody of the drug specimens and the police officers' unjustified non-observance of Section 21 of RA 9165. In light of this, accused-appellant Sarabia must perforce be acquitted.

Epilogue

On a final note, the Court stresses that the campaign against illegal drugs, no matter how relentlessly and vigorously it is pursued, can never be won by resorting to shortcuts, quick fixes and convenient circumventions of the law. It can only be won through the conduct of well-prepared and well-organized operations that strictly comply with the mandatory requirements of the law.

Otherwise, by disregarding the rule of law as a means of curtailing the proliferation of illegal drugs, the so-called war on drugs becomes a self-defeating enterprise as it ends up assaulting the very persons it aims to protect from harm - the Filipino people. Simply stated, a battle waged against illegal drugs that resorts to shortcuts and tramples on the rights of the people is not a war on drugs; it essentially becomes a war against the people.

The sacred and indelible right to presumption of innocence enshrined in the Constitution, fortified by statutory safeguards, should not be sacrificed on the altar of expediency. Otherwise, by choosing convenience over the rule of law, the nation loses its very soul. The desecration of the rule of law is impermissible.

It is in this light that the Court restores the liberty of the accused.

WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated April 30, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08785 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Dennis Sarabia y Reyes 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 Bureau of Corrections, 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), J. Reyes, Jr., Lazaro-Javier, and Zalameda, JJ., concur.

[1] See Notice of Appeal dated June 4, 2018. Rollo, pp. 20-22.

[2] Rollo, pp. 2-19. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion, concurring.

[3] Second Division.

[4] CA rollo, pp. 53-68. Penned by Presiding Judge Philip G. Salvador.

[5] Entitled "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.

[6] Records (Criminal Case Nos. 15573 & 15574), p. 1.

[7] Records (Criminal Case No. 15573), p. 1.

[7a] Stated as 3.319 in the CA Decision (see rollo, p. 3) and RTC Decision (see CA rollo, p. 54).

[8] Records (Criminal Case No. 15574), p. 1.

[9] Rollo, pp. 4-5.

[10] Id. at 5-6.

[11] CA rollo, p. 68.

[12] Rollo, pp. 18-19.

[13] Id. at 18.

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

[15] *People v. Fernandez*, G.R. No. 198875, June 4, 2014, p. 2 (Unsigned Resolution).

[16] *People v. Guzon*, 719 Phil. 441, 451 (2013).

[17] *People v. Punzalan*, 173 Phil. 72, 90-91 (2015).

[18] *People v. Guzon*, supra note 16, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

[19] *People v. Ubungen*, G.R. No. 225497, July 23, 2018, accessed at < <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64320> >.

[20] *People v. Guzon*, supra note 16, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

[21] Records (Criminal Case No. 15573), pp. 151-152.

[22] TSN, September 9, 2016, p. 197.

[23] RULES OF COURT, Rule 130, Sec. 36.

[24] *People's Bank & Trust Company v. Judge Leonidas*, 283 Phil. 991, 994 (1992).

[25] Records (Criminal Case No. 15573), p. 60.

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

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

approved on July 15, 2014.

[28] PNPM-D-O-3-1-99[NG].

[29] Id.

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

[31] G.R. No. 228890, April 18, 2018, accessed at < <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241> >.

[32] 736 Phil. 749 (2014).

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

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

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

[36] 797 Phil. 671 (2016).

[37] Id. at 690.

[38] TSN, April 29, 2014, p. 38.

[39] Rollo, p. 5.

[40] TSN, April 29, 2014, p. 38.

[41] Supra note 31.

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