

Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 229046

Present:

- versus -

CARPIO, J., *Chairperson,*
 CAGUIOA,
 J. REYES, JR.,
 LAZARO-JAVIER, and
 ZALAMEDA, JJ.

NOEL CARDENAS y HALILI,
 Accused-Appellant.

Promulgated:

11 SEP 2019

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DECISION

CAGUIOA, J.:

“If the arresting officers were unable to comply with the [requirements under Section 21 of Republic Act No. (RA) 9156], they were under obligation to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.”¹

The Case

Before the Court is an ordinary appeal² filed by accused-appellant Noel Cardenas y Halili (accused-appellant Cardenas), assailing the Decision³ dated June 27, 2016 (assailed Decision) of the Court of Appeals⁴ (CA) in CA-G.R. CR-HC No. 07032, which affirmed the Decision⁵ dated June 5, 2014 rendered

¹ *People v. Ancheta*, 687 Phil. 569, 581 (2012). Emphasis and underscoring supplied.

² See Notice of Appeal dated July 11, 2016; *rollo*, pp. 14-16.

³ *Rollo*, pp. 2-13. Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla, concurring.

⁴ Second Division.

⁵ CA *rollo*, pp. 56-64. Penned by Presiding Judge Lily Ann M. Padaen.

by the Regional Trial Court (RTC) of Quezon City, Branch 82 in Criminal Case No. Q-08-154072, entitled *People of the Philippines v. Noel Cardenas y Halili*, finding accused-appellant Cardenas guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁶ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:⁷

Accused-appellant [Cardenas] was charged under the following criminal information, which reads:

“That on or about the 12th day of September, 2008, in Quezon City, Philippines, the above-named accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction zero point sixty two (0.62) grams (*sic*) of dried Marijuana Fruiting tops, a dangerous drug.

CONTRARY TO LAW.”

Upon arraignment on November 26, 2008, the accused-appellant pleaded not guilty to the offense charged. Thereafter, trial on the merits ensued.

x x x x

As culled from the records, the prosecution’s version is herein quoted:

“On 12 September 2008, a male confidential informant reported to Police Inspector Romeo Rabuya [(PI Rabuya)] of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of Police Station 11, Galas, Quezon City the illegal drug activities of a certain “Boom Tarat-Tarat” (later identified as [accused-appellant Cardenas]) in the said area. In response, [PI] Rabuya dispatched Police Officer 2 Jorge Santiago [(PO2 Santiago)] and Police Officer 2 Jayson Perez [(PO2 Perez)] to conduct a surveillance and casing at Unang Hakbang St. in front of No. 78 Galas, Quezon City.

Upon arrival at the area, [PO2] Santiago and [PO2] Perez did not see anyone conforming to the description of [accused-appellant] Cardenas as communicated to them

⁶ 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.

⁷ *Rollo*, pp. 2-6.

by the confidential informant. The two then returned to the SAID-SOTG and reported their finding to [PI] Rabuya.

[PI] Rabuya recommended that a buy-bust operation be conducted against [accused-appellant] Cardenas, designating [PO2] Santiago as the poseur-buyer who would use the marked Php100.00 bill. The other members of the buy-bust operation team assembled by [PI] Rabuya were Police Officer 1 Erwin Bautista [(PO1 Bautista)], Police Officer 1 Franklin Gadia [(PO1 Gadia)], and [PI] Rabuya himself. The buy-bust operation team likewise coordinated with the Philippine Drug Enforcement Agency (PDEA).

After the Pre-Operation Report was prepared, the buy-bust team proceeded to the area near No. 78 Unang Hakbang St., Galas, Quezon City. As agreed, the buy-bust team would standby from a distance of about 100 meters while [PO2] Santiago and the confidential informant transact with [accused-appellant] Cardenas. Once the sale was consummated, [PO2] Santiago would scratch his head as a signal for the rest of the team to apprehend [accused-appellant] Cardenas.

When [PO2] Santiago and the confidential informant saw [accused-appellant] Cardenas at the said area, the two proceeded to meet with [accused-appellant] Cardenas. The confidential informant introduced [PO2] Santiago to [accused-appellant] Cardenas.

[Accused-appellant] Cardenas then asked [PO2] Santiago whether he had money to buy drugs. [PO2] Santiago replied in the affirmative by showing the marked Php100.00 bill. Thereafter, [accused-appellant] Cardenas pulled from the right front pocket of his pants one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops. [PO2] Santiago handed the marked Php100.00 bill to [accused-appellant] Cardenas while the latter handed to him the said one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops. At that juncture, [PO2] Santiago scratched his head, as a signal to the rest of the buy-bust team that was on standby that the sale had already been consummated.

[PO2] Santiago then held the hand of [accused-appellant] Cardenas to prevent him from escaping. Subsequently, the rest of the buy-bust team led by [PO2] Perez arrived and approached [accused-appellant] Cardenas. [PO2] Perez informed [accused-appellant] Cardenas of his constitutional rights.

[PO2] Santiago then marked the one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops with his initials "JS" (Jorge



Santiago) and "NC" (Noel Cardenas). The Inventory Receipt dated 12 September 2008 was readily accomplished at the same place. A representative of the media, Jimmy Mendoza, President of the PDEA Press Corps, witnessed the marking and inventory of the one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops with the markings "JS" and "NC". [PO2] Santiago then placed the seized item in a plastic bag.

[PO2] Santiago and the rest of the buy-bust team, together with [accused-appellant] Cardenas went to Police Station 11. At the police station, [PO2] Santiago turned over the seized item to investigator Police Officer 3 Jonathan Carranza [(PO3 Carranza)].

[PO3] Carranza then prepared the Request for Laboratory Examination dated 12 September 2008 directed to the Chemistry Division of the Philippine National Police (PNP) Crime Laboratory Office Station 19.

[PO2] Santiago brought the seized item for physical and chemical examination to the aforesaid crime laboratory.

In Chemistry Report No. D-455-2008 dated 12 September 2008, Engr. Leonard M. Jabonillo [(Engr. Jabonillo)], Forensic Chemist of the PNP Crime Laboratory confirmed that the seized item from [accused-appellant] Cardenas consisting of one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops weighing 0.62 gram with the markings "JS" and "NC," was indeed a dangerous drug, marijuana. After examination, [Engr.] Jabonillo turned over the one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops with the markings "JS" and "NC" to the evidence custodian of the PNP Crime Laboratory."

On the other hand, accused-appellant [Cardenas'] version is as follows:

"On 12 September 2008, at around 3:00 o'clock in the afternoon, [accused-appellant Cardenas] was at home sleeping with (*sic*) his mother, TERESITA CARDENAS [(Teresita)] was with her granddaughter watching the television, when four (4) to five (5) policemen suddenly barged in their house. They told Teresita that they wanted to talk to her son. When she replied that [accused-appellant Cardenas] was sleeping, they suddenly went inside her son's room. Awakened by the presence of the policemen, [accused-appellant Cardenas] was shocked that he was being accused of selling marijuana. He was apprehended and brought to Police Station 11 in Galas, where he was forced to admit his alleged crime but refused to do the same. He was subsequently brought for

inquest on 13 September 2008 where he learned that he was being charged for selling marijuana. (TSN, 7 September 2011, pp. 4-7; TSN, 14 August, pp. 2-4)”⁸

The Ruling of the RTC

In its Decision dated June 5, 2014, the RTC found accused-appellant Cardenas guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.

The dispositive portion of the RTC’s Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **Noel Cardenas y Halili “Guilty”** beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.

Accordingly, this Court sentences accused **Noel Cardenas y Halili** to suffer the penalty of **life imprisonment** and to pay a **Fine** in the amount of Five [H]undred Thousand Pesos (P500,000.00).

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.

SO ORDERED.⁹

According to the RTC, “[t]he evidence presented by the prosecution unequivocally established that a successful buy-bust operation took place which resulted in the arrest of [accused-appellant Cardenas].”¹⁰

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

The Ruling of the CA

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

WHEREFORE, the appeal is **DENIED**. The Decision dated June 5, 2014 of the Regional Trial Court (RTC) of Quezon City, Branch 82, in Criminal Case No. Q-08-154072 is hereby **AFFIRMED**.

SO ORDERED.¹¹

⁸ CA rollo, pp. 89-93.

⁹ Id. at 63-64; emphasis in the original.

¹⁰ Id. at 61.

¹¹ Rollo, p. 12.

In sum, the CA found that “[a]ll told, the totality of the evidence presented in the instant case indubitably confirms accused-appellant’s guilt of the offense charged beyond reasonable doubt.”¹²

Hence, this appeal before the Court of Last Resort.

Issue

Stripped to its core, for the Court’s resolution is the issue of whether accused-appellant Cardenas is guilty beyond reasonable doubt for the crime charged.

The Court’s Ruling

The foregoing question is answered in the *negative*. Accused-appellant Cardenas’ guilt was not proven beyond reasonable doubt. Therefore, accused-appellant Cardenas is acquitted of the crime charged.

The Elements of Illegal Sale of Dangerous Drugs

Accused-appellant Cardenas was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution 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.**¹³

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.**¹⁴ Therefore, in all drugs cases, compliance with the chain of custody rule is crucial in establishing the accused’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

¹² Id.

¹³ *People v. Opiana*, 750 Phil. 140, 147 (2015).

¹⁴ *People v. Guzon*, 719 Phil. 441, 451 (2013).



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.¹⁵

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 destruction.¹⁶

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.¹⁷

The chain of custody 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 required to make a finding of guilt.¹⁸

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.

In the Instant Case, the Chain of Custody is Broken

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 alleged seized drug specimen.**

According to the prosecution's version of events, after the buy-bust was conducted, the team proceeded to the police station, wherein PO2 Santiago turned over the seized item to PO3 Carranza. After PO3 Carranza prepared

¹⁵ *People v. Punzalan*, 773 Phil. 72, 91 (2015).

¹⁶ *People v. Guzon*, supra note 14, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

¹⁷ *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

¹⁸ *People v. Guzon*, supra note 14, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).



the Request for Laboratory Examination, PO2 Santiago brought the seized item for physical and chemical examination to the crime laboratory and turned over the same to Engr. Jabonillo, the Forensic Chemist of the PNP Crime Laboratory.¹⁹

However, on the witness stand, PO2 Santiago testified that he turned over the alleged seized drug specimen to one SPO1 Ronaldo Corea (SPO1 Corea). According to PO2 Santiago's testimony, it was SPO1 Corea who turned over the specimen to PO3 Carranza.²⁰

As SPO1 Corea was not presented by the prosecution, the evidence on record is silent as to how SPO1 Corea handled the specimen, the condition of the specimen at the time the specimen was handed over to SPO1 Corea, the precautions taken by SPO1 Corea to ensure that there had been no change in the condition of the item, and how SPO1 Corea transferred possession of the specimen to PO3 Carranza. **In short, the chain of custody of the specimen from PO2 Santiago to SPO1 Corea and from SPO1 Corea to PO3 Carranza was not firmly established.**

Further, according to the prosecution's theory, Engr. Jabonilla examined the alleged seized drug specimen and subsequently turned over the same to the evidence custodian of the PNP Crime Laboratory.

However, the evidence on record is silent as to how Engr. Jabonilla exactly managed and handled the specimen. Worse, the evidence custodian was not even identified and presented as a witness. The prosecution was not able to establish with clarity and certainty how this anonymous evidence custodian stored the specimen and ensured the proper condition of the same. The evidence on record is likewise silent as to how the specimen was transferred back to Engr. Jabonilla, who alleged retrieved the specimen from the custodian in order to bring the same to the RTC during the trial. **Clearly, the chain of custody of the specimen from Engr. Jabonilla to the evidence custodian, and from the evidence custodian back to Engr. Jabonilla, was not satisfactorily established.**

Inevitably, with the prosecution failing to establish an unbroken chain of custody in the instant case, the acquittal of accused-appellant Cardenas is warranted due to the existence of reasonable doubt as to the *corpus delicti* of the crime charged.

*Strict Compliance of Section 21 of RA
9165*

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

¹⁹ CA rollo, p. 78.

²⁰ TSN, October 13, 2009, pp. 13-14.



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. The innocence and liberty of the accused are pitted unevenly against the powerful machinery 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.”²¹

Therefore, 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 mandates the following procedure in the seizure, custody, and disposition of dangerous drugs:

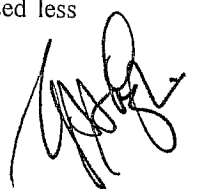
Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs,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

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]**²² (Emphasis supplied)

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

²¹ *People v. Santos*, 562 Phil. 458, 472 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

²² 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 RA 9165 WHICH IMPOSED LESS STRINGENT REQUIREMENTS IN THE PROCEDURE.” RA 10640, which imposed less stringent requirements in the procedure under Section 21, was approved only on July 15, 2014.



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[.]**²³

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 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.²⁴ 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 operation is most often than not a well-planned activity.

²³ IRR of RA 9165, Sec. 21. Emphasis supplied.

²⁴ IRR of RA 9165, Art. II, Sec. 21(a).



To reiterate, the Court stresses that the aforementioned procedural requirements laid down in Section 21 of RA 9165 are ***mandatory*** in nature. In *People v. Tomawis*,²⁵ 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*,²⁶ without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.²⁷

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”.²⁸

Permissible Non-Compliance of Section 21 of RA 9165

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

²⁵ G.R. No. 228890, April 18, 2018, 862 SCRA 131.

²⁶ 736 Phil. 749 (2014).

²⁷ Id. at 764.

²⁸ *People v. Tomawis*, supra note 25 at 149-150.



Section 21 of the IRR 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 lapses on the part of the police officers** and (2) **be able to justify the same.**²⁹

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 necessarily be compromised.³⁰ As the Court explained in *People v. Reyes*:³¹

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.³²

In the Instant Case, the Prosecution failed to both Recognize and Sufficiently Justify the 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.*

The unequivocal testimony of the prosecution's first witness, PO2 Santiago, reveals that, **out of the three required witnesses, only the representative of the media witnessed the buy-bust operation. No justifiable ground was offered to account for this serious breach of the law:**

²⁹ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

³⁰ See *People v. Sumili*, 753 Phil. 342, 352 (2015).

³¹ 797 Phil. 671 (2016).

³² *Id.* at 690.

Q: You did not ask the presence of the Barangay to witness the preparation of the inventory receipt, right, Mr. Witness?

A: No, sir.

COURT: Why?

A: Because we were together with media representative, sir.

ATTY. BARTOLOME: You did not ask the presence of the Department of Justice to witness the preparation of this document, Mr. Witness?

A: No sir, because I thought that one representative was okay.

COURT: Who is the media representative?

A: Jimmy Mendoza, President of the PDEA Press Corps.

x x x x

Q: But you were familiar with Section 5, Republic Act. (sic) 9165?

A: Yes, sir.

Q: Despite of that you did not comply right, Mr. Witness?

A: Yes, sir.

x x x x

Q: What is your basis in saying that was already enough, Mr. Witness?

A: I thought, sir, that was already enough.³³

In fact, the RTC itself factually found that “**the police officers were not able to strictly comply with Section 21 of R.A. 9165**”³⁴ as the authorities purposely did not procure any elected Barangay official and representative from the DOJ as witnesses **because of the police officers’ mistaken belief that under Section 21 of RA 9165, only one witness suffices.**³⁵

Further, as to the marking of the alleged seized drug specimen, the Court observes that the police officers violated their own rules.

Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM),³⁶ the conduct of buy-bust operations requires the following:

³³ TSN, October 13, 2009, pp. 22-24.

³⁴ CA rollo, p. 63; emphasis supplied.

³⁵ Id. at 58.

³⁶ PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

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:

- 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 gel 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 arms' 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.³⁷ (Emphasis and underscoring supplied)

In the instant case, as factually found by the RTC itself, “[PO2] Santiago marked the marijuana with his initials ‘JS’ for Jorge Santiago and ‘NC’ for Noel Cardenas.”³⁸ The date, time, and place of the operation were not indicated on the markings, in clear contravention of the PNP’s own set of procedures for the conduct of buy-bust operations. Simply stated, the marking of the evidence was irregularly done.

*The Prosecution cannot rely on the
Presumption of Regularity*

In the assailed Decision, the CA posited the view that the version of events offered by the prosecution deserves “full faith and credit because of the presumption that they have performed their duties regularly.”³⁹

The CA erred in invoking the presumption of regularity in justifying the conviction of accused-appellant Cardenas.

Both the RTC and CA overlooked 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.⁴⁰ And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt,⁴¹ by proving each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.⁴² 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 this connection, the prosecution therefore, in cases involving dangerous drugs, always has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:⁴³

³⁷ Id; emphasis and underscoring supplied.

³⁸ CA rollo, p. 58.

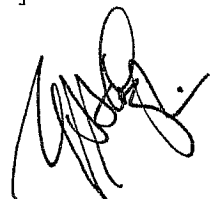
³⁹ Rollo, p. 11.

⁴⁰ 1987 CONSTITUTION, Art. III, Sec. 14(2). “In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.”

⁴¹ 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. [RULES OF COURT, Rule 133, Sec. 2.]

⁴² *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

⁴³ 745 Phil. 237 (2014).



x x x 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.⁴⁴

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, that the accused put forth a weak defense.

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 specimen and the police officers' unjustified non-observance of Section 21 of RA 9165. In light of this, accused-appellant Cardenas must perforce be acquitted.

Epilogue

While the Court now reverses the wrongful conviction of accused-appellant Cardenas by ordering his immediate release, it cannot be said that justice has truly won the day.

For despite the blatant disregard of the mandatory requirements provided under RA 9165, accused-appellant Cardenas has been made to suffer incarceration for over a decade. There is truth in the time-honored precept that *justice delayed is justice denied.*

Thus, the Court heavily enjoins the law enforcement agencies, the prosecutorial service, as well as the lower courts, to strictly and uncompromisingly observe and consider the mandatory requirements of the law on the prosecution of dangerous drugs cases.

⁴⁴ Id. at 250-251; emphasis supplied.



The Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. The Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.⁴⁵

Nevertheless, by thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. In other words, by disregarding the Constitution, the war on illegal drugs becomes a self-defeating and self-destructive enterprise. **A battle waged against illegal drugs that resorts to short cuts and tramples on the rights of the people is not a war on drugs; it is a war against the people.**

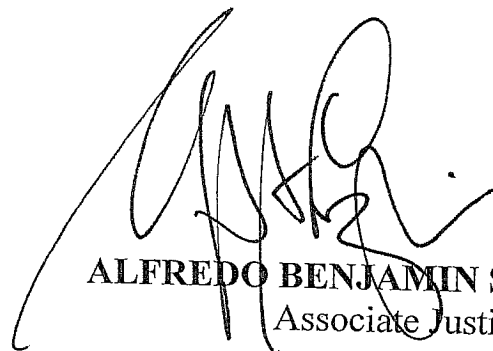
The sacred and indelible right to presumption of innocence enshrined in the Constitution, fortified by statutory safeguards, should not be sacrificed on the altar of expediency. Otherwise, by choosing convenience over the rule of law, the nation loses its very soul. This desecration of the rule of law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

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

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated June 27, 2016 of the Court of Appeals, in CA-G.R. CR-HC No. 07032 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Noel Cardenas y Halili is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.


SO ORDERED.

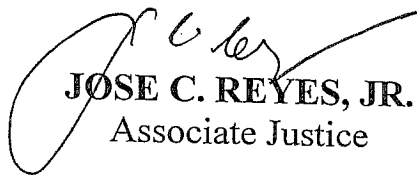


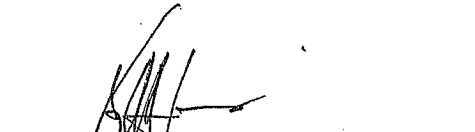
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

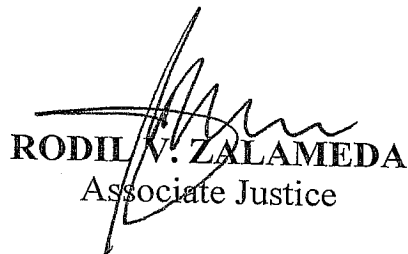
⁴⁵ 1987 CONSTITUTION, Art. II, Sec. 5.

WE CONCUR:


ANTONIO T. CARPIO
 Associate Justice
 Chairperson



JOSE C. REYES, JR.
 Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice


RODIL V. ZALAMEDA
 Associate Justice

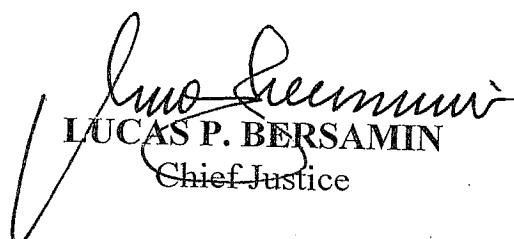
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
 Associate Justice
 Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
 Chief Justice

