



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 226481

Present:

CARPIO,* J., Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., JJ.

- versus -

JAYCENT MOLA y SELBOSA a.k.a.
"OTOK",
Accused-Appellant.

Promulgated:

18 APR 2018

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DECISION

PERALTA, J.:

On appeal is the April 15, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07419, which affirmed the March 9, 2015 Decision² of Regional Trial Court (RTC), Branch 44, Dagupan City, Pangasinan, in Criminal Case No. 2012-0027-D, convicting appellant Jaycent Mola y Selbosa a.k.a. "Otok" (Mola) for illegal sale of Methamphetamine Hydrochloride, commonly known as *shabu*, in violation of Section 5, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

* Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.
¹ Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Jhosep Y. Lopez, concurring (Rollo, pp. 2-9; CA rollo, 84-91).
² Records, pp. 135-140; CA rollo, pp. 47-52.

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The Information dated January 16, 2012 charged Mola as follows:

That on or about the 14th day of January, 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **JAYCENT MOLA y Selbosa @ Otok**, did then and there, willfully, unlawfully and criminally, sell and deliver to a poseur-buyer a Methamphetamine Hydrochloride (Shabu) contained in one (1) heat sealed plastic sachet weighing more or less 0.04 grams, in exchange of ₱500.00, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.³

In his arraignment, Mola entered a plea of "Not Guilty."⁴ He was detained at the city jail during the trial of the case.⁵

The prosecution presented SPO4 Enrique Columbino (*Columbino*), PO2 Joefrey Fulido (*Fulido*), SPO1 Salvador Cacho (*Cacho*), SPO3 Dante Marmolejo (*Marmolejo*), and PS/Insp. Myrna C. Malojo-Todeño (*Malojo-Todeño*). Only Mola testified for the defense.

SPO4 Columbino testified that: he was assigned as an Intelligence Operative at the Dagupan City Police Station; acting on a confidential information, he conducted a buy-bust operation on January 14, 2012 against Mola in *Sitio Kamanang*, Bonuan Tondaligan, Dagupan City; prior to the operation, he communicated to his superior, PCI Giovanni Mangonon, and prepared the marked money by using his own ₱500 bill; he coordinated with PCI Mangonon while he was accompanied by a civilian asset in Bonuan Gueset; it was past 5 to 6 o'clock in the afternoon when he was instructed to proceed to *Sitio Kamanang*; he boarded a tricycle going to the area together with the civilian asset and companions from the Police Community Precinct (*PCP*) of Bonuan Tondaligan; upon arrival thereat, the civilian asset pointed to him Mola, who was about seven (7) meters away and staying in front of Jerry Cayabyab's (*Cayabyab*) store; while inside the tricycle, he waived to Mola with the use of the marked money, extending his finger and putting it under his nose to signify the use of *shabu*; Mola waived back at him and entered an alley; he waited for him in front of the store and, after a few minutes, Mola went out of the alley and gave him a sachet of *shabu* in exchange of the P500 bill; thereafter, he held Mola's hands and identified himself as a police officer; by that time, Cayabyab alighted from a passenger jeepney and asked, "*Akin tan? Akin tan?*" (*What is that? What is that?*); he showed him the seized sachet of *shabu* and told him to inform Mola's relatives to follow him to the PCP Tondaligan, where he marked the seized items and prepared the confiscation/inventory receipt; they proceeded to the

³ Records, pp. 1-2.

⁴ *Id.* at 38-40.

⁵ *Id.* at 29-30.

Dagupan City Police Station, where he turned over Mola, the sachet of shabu, the buy-bust money, and the confiscation/inventory receipt to Duty Investigator SPO3 Marmolejo; the following day, he got back the sachet of *shabu* from SPO3 Marmolejo and brought it to the PNP Crime Laboratory in Lingayen, Pangasinan, on the basis of the letter-request prepared by SPO3 Marmolejo; and he returned to Cayabyab's store to ask him to sign the confiscation/inventory receipt, which the latter did by printing his name on it.

PO2 Fulido attested to the fact that he was the Blotter Book Custodian in relation to Entry Nos. 747 and 748 of Volume 93, Series of 2011 of the Blotter Book of the Dagupan City Police Station since PO3 Crisostomo Benevente, the one who recorded the incident, had retired from service.⁶ After he read the contents of the Blotter Book, the defense counsel admitted that the Certification attached to the case records is a faithful reproduction of the entries in the Blotter Book.⁷

The testimonies of the following witnesses were dispensed with in view of the admission of the defense counsel:

SPO1 Cacho – He was the one who prepared the letter request for laboratory examination, coordination form, pre-operation report, and letter to the Dangerous Drugs Board as well as the one who took the pictures on Molo's arrest.⁸

SPO3 Marmolejo – On January 14, 2012, he was the Duty Investigator in tandem with SPO1 Cacho; on said date, he received from SPO4 Columbino one (1) plastic sachet of *shabu* for safekeeping after Mola was arrested; and, on the next day, he returned said plastic sachet of *shabu* to SPO4 Columbino for the latter to bring it for laboratory examination.⁹

PS/Insp. Malojo-Todeño – She was the Forensic Chemist who received the letter-request as well as the specimen submitted which was one (1) heat-sealed plastic sachet of shabu; upon receipt thereof, she conducted a qualitative examination on the specimen, which yielded positive result to the test of Methamphetamine Hydrochloride; and said result was reduced into writing, evidenced by Initial Laboratory Report and Final Chemistry Report.¹⁰

⁶ *Id.* at 91.

⁷ *Id.*

⁸ *Id.* at 102.

⁹ *Id.* at 105.

¹⁰ *Id.* at 53-54.

In his defense, Mola denied the accusation that he sold *shabu* to SPO4 Columbino. Instead, he testified that around 6:30 p.m. on January 14, 2012 he was at the store owned by Cayabyab to buy cigarettes; the store was about twenty (20) meters away from his house located in *Sitio Kamanang*, Bonuan Gueset; he just finished eating and went to the store when he saw a tricycle stopped behind his back and its driver pointed at him; a passenger then got off from the tricycle, immediately held his right hand, and brought him inside; both the tricycle driver and the passenger, whose identities are unknown to him, were not in police uniform; he did not protest or shout but inquired on why he was being taken away; when they arrived at the Tondaligan Police Station, the tricycle driver opened his belt bag and brought out a ₱500 bill and a plastic sachet of *shabu*; despite having seen this, he did not disclose the matter to the investigator; and from the Bonuan Police Precinct, he was transferred to the police headquarters in Babaliwan, where he first met SPO4 Columbino and learned that he was being indicted for sale of dangerous drugs.

On March 9, 2015, the RTC found Mola guilty of the crime charged. He was sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) as well as the costs of suit.

Mola appealed to the CA on the grounds that:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE BUY-BUST TEAM TO COMPLY WITH SECTION 21, ARTICLE II OF R.A. NO. 9165.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS.¹¹

It was contended that the prosecution failed to comply with Section 21 (1), Article II of R.A. No. 9165. In particular: (1) SPO4 Columbino did not immediately mark the seized sachet of *shabu* even if he could have easily done so at the place of arrest; (2) the confiscation report shows that no representatives from the Department of Justice (*DOJ*), the local government, and the media attended the marking and inventory of the seized items; (3) together with the seized illegal drugs, SPO4 Columbino went back to Cayabyab's house for the latter's signing of the confiscation receipt; (4) after

¹¹ *Rollo*, pp. 5-6.

turning over the plastic sachet and inventory receipt to the investigating officer, SPO4 Columbino once again took possession of the alleged *shabu* for the purpose of bringing the same to the forensic chemist; and (5) there is no testimony or a stipulation to the effect that the forensic chemist received the seized article as marked, properly sealed and intact, that she resealed it after examination of the content, and that she placed her own marking on the same to ensure that it could not be tampered pending trial.

The conviction of Mola was sustained. For the appellate court, the recovery and handling of the seized illegal drugs were more than satisfactorily established. Considering that the integrity of the confiscated sachet of *shabu* has been maintained, it was held that the absence of an elected public official and representatives from the media and the DOJ during the inventory-taking and photograph is not deemed as fatal to the prosecution's case. Moreover, R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*) expressly authorizes the marking and inventory-taking of the seized contraband "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," in case of a warrantless seizure resulting from a buy-bust operation.

Before Us, both Mola and the People manifested that they would no longer file a Supplemental Brief, taking into account their discussions on the issues in their respective Briefs before the CA.¹²

The appeal is meritorious.

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165¹³ specifies:

(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.

Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. No. 9165 provides:


(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically

¹²

Id. at 20-24, 27-31.

¹³

Took effect on July 4, 2002.



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[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, 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.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."¹⁴ Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts

¹⁴ Senate Journal. Session No. 80. 16th Congress, 1st Regular Session. June 4, 2014, p. 348.



apprehended."¹⁵ In addition, "[t]he requirement that inventory is required to be done in a police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."¹⁶

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."¹⁷ In his Co-sponsorship Speech, he noted:

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

x x x x

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

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

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no

¹⁵ *Id.* at 348.

¹⁶ *Id.*

¹⁷ *Id.* at 349.



media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.¹⁸

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, We opined in *People v. Miranda*:¹⁹


The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved.** Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**²⁰

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee “against planting of evidence and frame up,” *i.e.*, they are “necessary to insulate the apprehension and incrimination proceedings from

¹⁸ *Id.* at 349-350. (Emphasis supplied)

¹⁹ G.R. No. 229671, January 31, 2018. (Emphasis and underscoring ours)

²⁰ See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R. No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017; *People v. Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017; *People v. Ceralde*, G.R. No. 228894, August 7, 2017; and *People v. Macapundag*, G.R. No. 225965, March 13, 2017.



any taint of illegitimacy or irregularity.”²¹ Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed by Mola on January 14, 2012.

A review of the records yielded no justifiable reason for the prosecution's non-compliance with the first link in the chain of custody of evidence, *i.e.*, the marking by the apprehending officer of the dangerous drug seized from the accused. The one advanced by SPO4 Columbino as to why it was impractical for him to conduct the marking and inventory of the sachet of alleged *shabu* at the place of arrest and seizure is unconvincing. His assertion that he opted to go to the PCP Tondaligan, which was the nearest police station, because he was “only one” and “there were many persons” is but a hollow excuse. The insinuation that the safety and security of his person or of the items seized was under immediate or extreme danger was self-serving as it was not substantiated or corroborated by evidence. To note, it appears that his claim is contrary to his statement during the direct examination that he was with the civilian asset and his companions from the PCP Tondaligan when he proceeded to *Sitio Kamanang* for the buy-bust operation.²²

Likewise, the only person who claimed to have seen the sachet of alleged *shabu* at the time it was seized from Mola was Cayabyab. Obviously, he is not one of the persons required by law to observe the marking and inventory-taking. The prosecution was silent on why the required witnesses were unavailable. It was never alleged and proved, to cite a few, that their attendance was impossible because the place of arrest was a remote area; that their safety during the inventory and photograph of the seized illegal drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his or her behalf; or that the elected officials themselves were involved in the punishable acts sought to be apprehended.

Assuming that Cayabyab's presence counts, the manner how he served as a witness cannot be considered as substantial compliance. During the trial, SPO4 Columbino disclosed:



²¹ *People v. Sagana*, G.R. No. 208471, August 2, 2017.

²² TSN, April 4, 2013, pp. 3-4, 7.

Q What about the son of Jerry Cayabyab?

A When I arrested Jaycent Mola, the son of Jerry Cayabyab did not come out of the store.

Q While you were having a transaction after Jaycent Mola came out of the alley, where was this son of Jerry Cayabyab?

A He was inside the store.

Q So he saw the incident?

A Yes, Ma'am.

Q Jerry Cayabyab just arrived after you already arrested Jaycent?

A Yes, Ma'am, then I showed to him the sachet of shabu.

Q With respect to the confiscation receipt, you prepared this while you were in front of the store?

A No, Ma'am, at PCP Bonuan Tondaligan.

Q This Jerry Cayabyab was with you when you prepared this confiscation/inventory receipt at your precinct?

A No, Ma'am, I went to his store.

Q And you asked him to sign?

A Yes, Ma'am. Because I know Jerry Cayabyab.

Q But he did not sign in the confiscation receipt, Mr. Witness?

A The printed, Ma'am.

Q This printed name of Jerry Cayabyab is already his signature?

A Yes, Ma'am.

Q So when you asked him to sign, you did not bring with you the small plastic sachet of shabu because it was already left at your precinct?

A Yes, Ma'am, but before I brought that sachet of shabu to the PCP, I showed it to Jerry Cayabyab.

Q But the inventory of said item was done at your precinct?

A PCP Tondaligan, Ma'am.

Q PCP Tondaligan. Without the presence of Jerry because you returned to Jerry's store only for him to sign the confiscation receipt?

A Yes, Ma'am.

Q He was not able to witness the inventory?

A No, Ma'am.

Q You simply asked him to sign?

A He just read the contents of the confiscation receipt.

Q You did not let the son of Jerry be a witness.

A No, Ma'am.²³

While Cayabyab witnessed the seizure of a sachet of alleged *shabu* from Mola, he did not see the actual marking and physical inventory of all the confiscated items. As SPO4 Columbino admitted, he (Cayabyab) was not present at the PCP Tondaligan, where the procedures required by law were done. His only participation was that he signed, by writing his name in printed form, the accomplished confiscation/inventory receipt at his store. Despite SPO4 Columbino's claim that the sachet of *shabu* was in his possession when he returned to Cayabyab's place, there was no testimony that he had shown the same to him.²⁴ These considering, it cannot be said with certainty that Cayabyab could attest to the fact that the marked sachet of *shabu* was the same item that was seized from Mola at the time of his arrest.

Moreover, in dispensing with the testimony of the forensic chemist, it is evident that the prosecution failed to show another link in the chain of custody. Since her testimony was limited to the result of the examination she conducted and not on the source of the substance, PS/Insp. Malojo-Todeño failed to certify that the chemical substance presented for laboratory examination and tested positive for *shabu* was the very same substance recovered from Mola.²⁵ The turnover and submission of the marked illegal drugs seized from the forensic chemist to the court was also not established.²⁶ Neither was there any evidence to indicate how the sachet of *shabu* was handled during and after the laboratory examination and on the identity of the person/s who had custody of the item before it was presented to the court as evidence.²⁷ Without the testimonies or stipulations stating the details on when and how the seized sachet of *shabu* was brought from the crime laboratory to the court, as well as the specifics on who actually delivered and received the same from the crime laboratory to the court, it cannot be ascertained whether the seized item presented in evidence was the same one confiscated from Mola upon his arrest.²⁸ This gap in the chain of custody creates doubt as to whether the *corpus delicti* of the crime had been properly preserved.

The illegal drugs being the *corpus delicti*, it is essential for the prosecution to establish with moral certainty and prove beyond reasonable doubt that the illegal drugs presented and offered in evidence before the trial court are the same illegal drugs lawfully seized from the accused, and tested and found to be positive for dangerous substance.²⁹ At bar, evidence at hand do not support the conclusion that the integrity and evidentiary value of the subject sachet of *shabu* were successfully and properly preserved and

²⁴ *Id.* at 6.

²⁵ See *People v. Gayoso*, G.R. No. 206590, March 27, 2017.

²⁶ *People v. Gayoso*, *supra*.

²⁷ See *People v. Abelarde*, G.R. No. 215713, January 22, 2018.

²⁸ See *People v. Dumagay*, G.R. No. 216753, February 7, 2018.

²⁹ See *People v. Sic-Open*, G.R. No. 211680, September 21, 2016, 804 SCRA 94, 111.

safeguarded through an unbroken chain of custody. The prosecution manifestly failed to prove that the marked and inventoried illegal substance was the very same object taken from Mola and that the one found positive for *shabu* by the crime laboratory was the same sachet of illegal drugs that was delivered to and received by the court.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.³⁰ It has the **positive duty** to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must **initiate** in acknowledging and justifying any perceived deviations from the requirements of the law.³¹ Its failure to follow the mandated procedure must be **adequately explained** and must be **proven as a fact** in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.³² A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.³³

On the other hand, the fact that the accused raised his or her objections against the integrity and evidentiary value of the drugs purportedly seized from him or her only for the first time on appeal **does not preclude** the CA or this Court from passing upon the same.³⁴ If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law.³⁵

The presumption of regularity in the performance of official duty cannot work in favor of the law enforcers since the records reveal inexcusable lapses, which are affirmative proofs of irregularity, in observing the requisites of the law. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause is successfully triggered.³⁶ In this

³⁰ See *People v. Macapundag*, *supra* note 20.

³¹ See *People v. Miranda*, *supra* note 19; *People v. Paz*, *supra* note 20; *People v. Mamangon*, *supra* note 20; and *People v. Jugo*, *supra* note 20.

³² *People v. Saragena*, G.R. No. 210677, August 23, 2017.

³³ See *People v. Abelarde*, *supra* note 27; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017; *People v. Saragena*, *supra*; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Sagana*, *supra* note 21; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017.

³⁴ See *People v. Miranda*, *supra* note 19.

³⁵ *People v. Miranda*, *id.*

³⁶ *Id.*

case, the presumption of regularity, which is disputable by contrary proof, had been contradicted and overcome by evidence of non-compliance with the law.³⁷

Neither is lack of improper motive on the part of the policemen helpful to convict Mola.

x x x In *People v. Andaya*, therefore, we have precisely warned against judicially pronouncing guilty the person arrested by law enforcers just because he could not impute any ill motives to them for arresting him, and have cautioned against presuming the regularity of the arrest on that basis alone, stating:

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.

The criminal accusation against a person must be substantiated by proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty.³⁸

³⁷ See *People v. Gajo*, G.R. No. 217026, January 22, 2018 and *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

³⁸ *Casona v. People*, G.R. No. 179757, September 13, 2017 (Citations omitted).

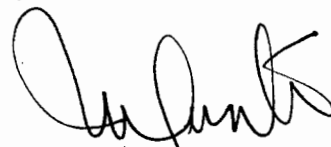


To repeat, the presumption of regularity “will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused.”³⁹

WHEREFORE, premises considered, the April 15, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 07419, which affirmed the March 9, 2015 Decision of Regional Trial Court, Branch 44, Dagupan City, Pangasinan, in Criminal Case No. 2012-0027-D, is **REVERSED and SET ASIDE**. Appellant Jaycent Mola y Selbosa a.k.a. “*Otok*” is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

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

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

³⁹ *People v. Segundo*, supra note 33 and *People v. Diputado*, G.R. No. 213922, July 5, 2017. See also *Casona v. People*, supra note 38.

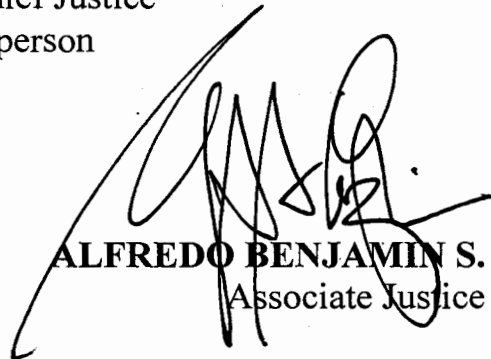
WE CONCUR:




ANTONIO T. CARPIO
Acting Chief Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



ANTONIO T. CARPIO
Acting Chief Justice

