Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

MANUEL FERRER *y* REMOQUILLO a.k.a. "KANO," KIYAGA MACMOD *y* USMAN a.k.a. "KIYAGA" and DIMAS MACMOD *y* MAMA a.k.a. "DIMAS,"
Accused-Appellants.

G.R. No. 213914

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

June 6, 2018

x - x

DECISION

MARTIRES, *J.*:

Accused-appellants MANUEL FERRER *y* REMOQUILLO a.k.a. "KANO," KIYAGA MACMOD *y* USMAN a.k.a. "KIYAGA" and DIMAS MACMOD *y* MAMA a.k.a. "DIMAS" appeal from the 29 November 2013 Decision[1] and 25 April 2014 Resolution[2] of the Court of Appeals *(CA)*, Fourth Division, in CA-G.R. CR-H.C. No. 05531 affirming the 29 March 2012 Judgment[3] of the Regional Trial Court *(RTC)*, Branch 204, Muntinlupa City, and denying their Motion for Reconsideration,[4] respectively.

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[1] *Rollo*, pp. 2-12; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba.

[2] CA *rollo*, pp. 150-151.

[3] Records, pp. 456-467; penned by Judge Juanita T. Guerrero.

[4] CA *rollo*, pp. 126-134.

THE FACTS

Accused-appellants were charged with Violation of Section *(Sec.)* 5, in relation to Sec. 26 of Article *(Art.)* II, of Republic Act *(R.A.)* No. 9165[5] in an Information docketed as Criminal Case No. 06-761, the accusatory portion of which reads as follows:

> That on the 12th day of August 2006, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping and aiding one another, not being authorized by law, did then and there, willfully and unlawfully sell, trade, deliver, and give away to another Methamphetamine Hydrochloride, a dangerous drug, weighing 98.29 grams, contained in two (2) heat-sealed transparent plastic sachets, in violation of the above-cited law.
>
> CONTRARY TO LAW.[6]

When arraigned, the accused-appellants[7] pleaded not guilty to the charge against them. Hence, trial ensued.

The prosecution presented PO1 Benito F. Viernes, Jr.[8] *(Viernes)* who, during the time material to the case, was an intelligence operative assigned to the Philippine Drug Enforcement Agency *(PDEA)* Calabarzon.[9] The testimony of Police Inspector Ruben M. Apostol *(Apostol)* was dispensed with after the parties stipulated that he was a forensic chemist assigned at the Philippine National Police *(PNP)* Regional Crime Laboratory *(laboratory),* Camp Vicente Lim *(Camp Lim),* Calamba, Laguna.

The accused-appellants Manuel Ferrer *(Manuel),* Kiyaga Macmod *(Kiyaga),* and Dimas Macmod *(Dimas)* took the witness stand to refute the charge against them.

The Version of the Prosecution

On 11 August 2006, a confidential informant *(CI)* came to the PDEA Calabarzon Office, and informed the Regional Director that she was to deal with Manuel alias "Kano" in the sale of a hundred grams of shabu amounting to ₱500.000.00. The CI also informed that the transaction would take place at the parking lot of Festival Mall *(mall),* Muntinlupa City.

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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."

6 Records, p. 1.

7 Id. at 50 and 73.

8 Variably referred to as "Benito Biernes" in the TSN.

9 Acronym for Cavite, Laguna, Batangas, Rizal and Quezon provinces.

Consequently, the Regional Director tasked Police Inspector Gregorio Caraig *(Caraig)* to lead a ten-member team with Viernes as the poseur-buyer and PO1 Carla Mayo *(Mayo)* as the backup arresting officer. As a pre-arranged signal that the sale was consummated, Viernes was to call Mayo's cellphone.[10]

A surveillance of the area was done on the same day. Before the actual operation took place, the team prepared a pre-operation report[11] while Viernes prepared a request[12] to the PDEA for authority to operate outside the area of jurisdiction. PDEA granted the request by issuing a certificate of coordination.[13] Viernes placed his personal markings on the two ₱500.00 bills[14] to be used as marked money, had the markings recorded in the blotter, and then placed the two bills on top of the boodle money.[15]

On 12 August 2006, armed with the proper authority to conduct their operation, the team proceeded to the transaction area. Viernes, accompanied by the CI, drove the vehicle going to the mall while the rest of the team rode in another vehicle. When they arrived at the mall at about 12:30 p.m., the CI contacted Manuel who later arrived with Kiyaga and Dimas *(spouses Macmods)*. The accused-appellants approached the vehicle and boarded it with Manuel taking the seat behind Viernes, Kiyaga in the middle, and Dimas on the right side. After introducing Viernes to the accused-appellants, the CI alighted from the vehicle to serve as lookout.[16]

When Manuel asked Viernes if he had the money, Viernes replied that he had the ₱500,000.00 and showed the former a paper bag containing the boodle money with the two real ₱500.00 bills on top. Viernes then demanded the shabu. Believing that Viernes was a real buyer, Manuel ordered Kiyaga to give Viernes the shabu. Kiyaga got two transparent plastic sachets from her pocket and handed these to Viernes who in turn handed the money to Dimas as told to do so by Manuel. With the transaction consummated, Viernes called Mayo's cellphone. Before Dimas could discover that the paper bag contained boodle money, Viernes introduced himself as a PDEA police operative and arrested Manuel, while the rest of the team arrested Kiyaga and Dimas.[17]

After the accused-appellants were arrested, Viernes marked the heat-sealed transparent plastic sachets as Exhs. "A"[18] and "B"[19] with his initials

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10 TSN, 20 June 2007, pp. 3-7.
11 Records, p. 346; Exh. "A."
12 Id. at 348; Exh. "C."
13 Id. at 347; Exh. "B."
14 Id. at 360; Exhs. "M" to "M-2."
15 TSN, 20 June 2007, pp. 6-10; TSN, 18 July 2007, pp. 5-7.
16 TSN, 18 July 2007, pp. 7-13 and 15.
17 Id. at 13-14, 16 and 19-20.
18 Exh. "D."
19 Exh. "D-1."

"BFV." The accused-appellants were informed of their constitutional rights and thereafter were brought to Camp Lim. Viernes was in possession of the confiscated plastic sachets from the time they left the mall until they reached Camp Lim.[20]

Upon arriving at their office, Viernes prepared the certificate of inventory[21] of the confiscated items, and the booking sheet and arrest report for Manuel,[22] Kiyaga,[23] and Dimas.[24] Viernes prepared the request[25] for the laboratory examination of the confiscated two pieces heat-sealed transparent sachets bearing the markings EXH. "A" and EXH. "B," "BFV," "08-12-06," and his initials, and the requests[26] for the drug testing and physical/medical examiation of the accused-appellants. On the same day, at 5:45 p.m., Viernes and Mayo brought to the laboratory the documents pertinent to the requests and the two pieces of transparent sachets.[27]

On 12 August 2006, the laboratory, through Apostol, issued Chemistry Report No. D-316-06[28] containing the following findings on the contents of the transparent sachets:

> FINDINGS:
>
> Qualitative examination conducted on specimen A and B gave **POSITIVE** result to the tests for the presence of **Methamphetamine hydrochloride**, a dangerous drug. x x x

As to the drug tests, the laboratory found Manuel positive for methamphetamine hydrochloride and the spouses Macmods negative for the same.[29]

The Version of the Defense

According to Manuel, two weeks prior to the 12 August 2006 incident, Jack and Grace *(the couple)* came to his store looking for Omar because they could not find him in the house he was renting which was just four houses away from Manuel's house. The couple were introduced to him by Omar, who was engaged in selling pirated compact disks *(CDs)*. The couple called Omar's cellphone and they talked about selling the merchandise which they were supposed to buy from him. He presumed that

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20 TSN, 18 July 2007, pp. 20-23.
21 Records, p. 349; Exh. "E."
22 Id. at 350; Exh. "F."
23 Id. at 351; Exh. "F-1."
24 Id. at 352; Exh. "F-2."
25 Id. at 353; Exh. "G."
26 Id. at 354and 355; Exhs. "H" and "I."
27 TSN, 18 July 2007, pp. 24-32.
28 Records, p. 356; Exh. "J."
29 Id. at 357; Exh. "K."

the merchandise the couple referred to were the pirated CDs because these were what Omar sold.[30]

On 12 August 2006, at about 9:00 a.m., the couple arrived at his store asking for Omar's whereabouts. When he told them that he did not know where Omar was, the couple called Omar's number. After the couple talked with Omar, the cellphone was handed to him. He obliged when Omar asked him to bring the couple to the mall.[31]

When they reached the mall, Omar called to tell him to wait until the person he had asked to fetch the couple arrived. He told Omar that he would wait at a certain fast food restaurant and that the person who would fetch the couple could be identified through his red shirt. Two persons, who he later came to know as the spouses Macmods when he was brought to the Canlubang police station, thereafter came and asked him if he was "Kano." He answered in the affirmative and subsequently brought the spouses Macmods to the parking area where the couple were waiting. The couple and the spouses Macmods subsequently left for Sucat.[32]

When Omar was on his way home, three men who introduced themselves as police officers blocked his way and told him that they would be bringing him to the police station for verification purposes. He asked them for what violation but he was told that he would only be questioned. At the police station, he told them that he did not know the spouses Macmods; he was nonetheless incarcerated with them. Grace was released from the police station, Jack was incarcerated, but Omar was never arrested.[33]

In their defense, the spouses Macmods deposed that on 12 August 2006, at around 9:00 a.m., they were outside the mall waiting for its opening when they were approached by a man, who they later came to know to be Manuel, asking for the location of a certain coffee shop. Despite having told Manuel that they did not know where the coffee shop was, he didn't leave the area. Suddenly, two men approached Manuel and talked with him. A commotion thereafter ensued when six men and a female arrived. The lone female, who was in handcuffs, uttered "Itong dalawa kasama nila, isama na natin" (These two are their companions, let us bring them also) referring to them. At that instance, they were made to board a vehicle, while Manuel was made to ride in another vehicle.[34]

While the spouses Macmods were inside the vehicle, the men who accosted them asked for ₱300,000.00 so that there would be no more

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30 TSN, 11 August 2010, pp. 2-4.
31 Id. at 4-6.
32 Id. at 6-7.
33 Id. at 8-10.
34 TSN, 10 November 2010, pp. 3-8.

problems. When they told them that they did not have that amount, the men lowered it to ₱50,000.00; but because they did not give in to this demand, they were incarcerated for two weeks. It was only during the inquest that the spouses Macmods were told they were being charged for selling illegal drugs.[35]

The Ruling of the RTC

The RTC found that the testimony of Viernes, the lone witness for the prosecution, was straightforward, unwavering, direct, and truthful in all aspects. It ruled that all the elements for the successful prosecution for illegal selling of prohibited drugs have been proven, *viz*: the identity of the buyer, who was Viernes; the identity of the sellers, who were the accused-appellants; the object of the sale, which was the 98.9 grams of methamphetamine hydrochloride, a prohibited drug; the consideration, which was the marked buy-bust money consisting of two ₱500.00 bills; the delivery of the items from Kiyaga to Viernes; and the receipt of the money by Dimas from Viernes.[36]

The RTC held that the chain of custody was never broken because the drug items were in the possession of Viernes from the time of confiscation to their transfer to the laboratory for examination; and that the markings and inventory of the drug items properly insured their integrity and purity.[37]

According to the RTC, the concerted overt actions of the three accused-appellants led to the conclusion that they conspired in selling and delivering the drug items to the poseur-buyer. Moreover, the denial of the accused-appellants pales in comparison to the direct and unwavering testimony of Viernes.[38]

The dispositive portion of the RTC judgment reads:

> **WHEREFORE,** premises considered and finding all the accused GUILTY beyond reasonable doubt of Violation of Sec. 5 of Republic Act No. 9165, MANUEL FERRER *y* REMOQUILLO, KIYAGA MACMOD *y* USMAN and DIMAS MACMOD *y* MAMA are each sentenced to LIFE IMPRISONMENT. They are further ordered to pay a fine of Php500,000.00 each and the costs of the suit.
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> The subject drug evidence consisting of two (2) packets of shabu are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

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35 Id. at 8-13.
36 Records, p. 465.
37 Id.
38 Id. at 466-467.

> The preventive imprisonment undergone by all the accused shall be credited in their favor.
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> SO ORDERED.[39]

Not satisfied with the ruling of the RTC, the accused-appellants appealed to the CA.

The Ruling of the CA

The CA found that the prosecution was able to establish the essential elements in an illegal sale of shabu and that the alleged inconsistencies cited by the accused-appellants do not materially affect the credibility of the prosecution's witness.[40]

The CA affirmed the findings of the RTC as to the unbroken chain of custody of the seized items and stated that what was important was the preservation of the identity and integrity of these items. The CA ruled that the accused-appellants' allegation of frame-up did not deserve credence while it upheld the presumption that the members of the buy-bust team performed their duties in a regular manner.[41]

Hence, the CA disposed of the case as follows:

> WHEREFORE, premises considered, the appeal is ***DISMISSED*** for lack of merit. The judgment dated March 29, 2012 of the Regional Trial Court of Muntinlupa City, Branch 204, in Criminal Case No. 06-761, is ***AFFIRMED.***
>
> **SO ORDERED.**[42]

Seeking to have the decision reversed, the accused-appellants moved for a reconsideration,[43] but the CA found no merit in their arguments and denied the motion.[44]

ISSUES

I.

SEC. 21 OF R.A. NO. 9165 WAS GROSSLY DISREGARDED. THERE WAS NO JUSTIFIABLE GROUND FOR NONCOMPLIANCE THEREWITH.

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39 Id. at 467.
40 *Rollo*, pp. 7-8.
41 Id. at 8-11.
42 Id. at 11.
43 *CA rollo*, pp. 126-133.
44 Id. at 150-151.

II.

THERE WAS A BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED DRUGS.[45]

OUR RULING

The appeal is impressed with merit.

The presumption that an accused is innocent prevails until his guilt is proven beyond reasonable doubt.

The legal principle constantly upheld in our jurisprudence is that in all criminal cases, the presumption of innocence of an accused is a constitutional right that should be upheld at all times.[46] The principle breathes life to the following provision in the fundamental law of the land, to wit:

> 2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided, that he has been duly notified and his failure to appear is unjustifiable.[47]

It is on the basis of this constitutional presumption that case law trenchantly maintains that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.[48] While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience.[49] Thus, the conviction of an accused can only be justified if his guilt has been established beyond reasonable doubt[50] which, under the Revised Rules of Court, is defined as follows:

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45 *Rollo*, pp. 36 and 42.
46 *People v. Arposeple*, G.R. No. 205787, 22 November 2017.
47 Sec. 14(2), Art. III of the 1987 Constitution.
48 *People v. Rodriguez*, G.R. No. 211721, 20 September 2017.
49 *Daayata v. People*, G.R. No. 205745, 8 March 2017.
50 *People v. Alboka*, G.R. No. 212195, 21 February 2018.

> **Section 2.** *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

The Court is aware that as a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, it having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.[51] This rule finds even more stringent application where the findings are sustained by the CA,[52] as in this case. But it must be equally stressed that this general rule is not cast in stone as not to admit recognized exceptions considering that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[53]

With these jurisprudential teachings as guide, the Court shall proceed with the evaluation of the case before it.

The prosecution failed to prove that the apprehending team complied with Sec. 21 of R.A. No. 9165.

Jurisprudence is consistent as to the elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal sale of dangerous drugs under Sec. 5,[54] Art. II of R.A. No. 9165, *viz*: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took

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51 Id.

52 *Belmonte v. People*, G.R. No. 224143, 28 June 2017.

53 *People v. Arposeple*, supra note 46.

54 Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x

place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[55]

In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established[56] beyond reasonable doubt to prove its case against the accused.[57] In order to preclude, therefore, any doubt on the identity of the dangerous drugs, the prosecution has the burden to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti.* In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[58] Equally significant, therefore, as establishing all the elements of violation of R.A. No. 9165 is proving that there was no hiatus in the chain of custody of the dangerous drugs and paraphernalia.[59] The Court has unfailingly explained the need to establish the identity of the seized drugs, *viz:*

> Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.[60]

Noteworthily, even the Dangerous Drugs Board *(DDB)* – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy[61] – has expressly defined chain of custody involving the dangerous drugs and other substances in the following terms in Sec. l(b) of DDB Regulation No. 1, Series of 2002,[62] to wit:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to

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55 People v. *Alboka*, supra note 50.
56 *People v. Arposeple*, supra note 46.
57 *People v. Calvelo,* G.R. No. 223526, 6 December 2017.
58 Id.
59 *People v. Arposeple,* supra note 46.
60 Id., citing *People v. Jaafar*, G.R. No. 219829, 18 January 2017, 815 SCRA 19, 29.
61 Sec. 77, R.A. No. 9165.
62 Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of R.A. No. 9165 in relation to Section 81(b), Article IX of R.A. No. 9165.

> safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition.

On the one hand, R.A. No. 9165 provides for the specific procedure to guide the police officers in preserving the integrity and evidentiary value of the seized items from the accused, *viz:*

> 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:
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> (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;
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> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
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> (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;
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> x x x x

The Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 specifically outlines the proper procedure to be followed in effecting Sec. 21(a) of the Act, viz:

> a. The apprehending office/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 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.** (emphasis and underscoring supplied)

In conjunction with Sec. 21, Art. II of R.A. No. 9165, jurisprudence dictates the four links in the chain of custody of the confiscated item that must be established by the prosecution: first, the seizure and marking, if practicable, 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.[63]

On the first link, the prosecution was able to establish that Viernes marked the confiscated heat-sealed transparent plastic sachets with the markings Exhibits "A"[64] and "B"[65] and his initials "BFV" and the date "08-12-06" in the presence of the accused-appellants.[66] It must be stressed however, that equally required pursuant to Sec. 21, Art. II of R.A. No. 9165 is that the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same.

While it would appear from the certificate of inventory that the inventory was witnessed by "Ding Bermudez" (*Bermudez*) of the Press Corps and barangay kagawad "Artemio P. Torres" (*Torres*), the prosecution never tried to elicit from Viernes how and when these witnesses to the inventory affixed their respective signatures on the certificate. Neither were Bermudez and Torres called to the witness stand to testify on the manner by

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63 *People v. Alboka*, supra note 50.
64 Exh. "D."
65 Exh. "D-1."
66 TSN, 18 July 2007, pp. 20-22.

which they signed the certificate. The Court cannot close its eyes on this glaring flaw as it has repeatedly stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of R.A No. 6425[67] again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[68]

Additionally, the prosecution was not able to prove that the seized items were inventoried and photographed in the presence of the accused-appellants and that copies thereof were furnished them. Indeed, the records do not show any photograph depicting the confiscated items. Worse, the certificate of inventory was not even signed by the accused-appellants or their representatives which would only lend truth to the probability that, in actuality, the inventory was never done in their presence.

What fortifies the probability that no inventory was actually made in the presence of the accused-appellants was the fact that Viernes never mentioned in his affidavit[69] that the confiscated items were inventoried at the police station. Viernes' affidavit plainly provides that after the marking of the two heat-sealed transparent sachets in the presence of the accused-appellants, the items were brought to the crime laboratory for examination. For sure, if the inventory and the taking of pictures of the seized items had actually taken place in accordance with the prescribed procedure under Sec. 21 of R.A. No. 9165, Viernes would not have failed to state the same in his affidavit.

Also truly surprising was that even Viernes was not sure that he was the one who prepared the certificate of inventory. During direct examination, Viernes admitted that he was the one who prepared the certificate, *viz*:

FISCAL BAYBAY:

Q. Did you in fact reach your office with the accused and the items?
A. Yes, sir.

Q. In your office, what documents if any, did you [prepare] in order to record the confiscation of the items you identified?

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67 Entitled "The Dangerous Drugs Act of 1972."

68 *People v. Ceralde*, G.R. No. 228894, 7 August 2017, citing *People v. Mendoza*, 736 Phil. 749, 764 (2014).

69 Records, pp. 358-359; Exh. "L."

A. The preparation of the certificate of inventory, sir.

Q. Where were you when that certificate of inventory was prepared?
A. I was present when it was prepared, sir.

Q. Who prepared?
A. Me, sir.[70] (emphasis supplied)

On cross-examination, Viernes wavered in his testimony stating that it was the investigator who prepared the certificate but thereafter claimed to have prepared this document upon being confronted with his statements during the direct examination, *viz*:

ATTY MEDINA:

Q. By the way, you said that after the operation there was this certificate of inventory that was prepared?
A. Yes, sir.

Q. And who actually prepared the certificate of inventory?
A. Our investigator and we were there when it was prepared, sir.

Q. So, it was the investigator who actually prepared the inventory?
A. Yes, sir.

Q. Not you as you have stated in your direct testimony?

FISCAL BAYBAY: I think the witness should be confronted with the transcript whether he actually said [that] during direct testimony.

x x x x

ATTY. MEDINA: On page 24 of the transcript of stenographic notes dated July 16, 2007 line number 18, who prepared, referring to the certificate of inventory, the answer was me.
A. The investigator and I were the ones who prepared it, sir.

Q. But not actually you who prepared the inventory?
A. He was the one who printed out the inventory but I was the one who wrote the inventory, sir.[71] (emphases supplied)

In a catena of cases, the Court had ruled that under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible. The Court clarifies that with the effectivity of R.A. No. 10640,[72] Sec. 21 of R.A. No. 9165 now reads:

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70 TSN, 18 July 2007, p. 24.
71 TSN, 24 April 2008, pp. 28-29.
72 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.'"

> 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 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 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 and custody over said items.** (emphasis and underscoring supplied)

Thus, noncompliance with the requirements of Sec. 21 of R.A. No. 9165 on justifiable grounds shall not render void and invalid the seizure and custody of the confiscated items as long as the integrity and the evidentiary value of the items had been properly preserved by the apprehending team. The burden therefore is with the prosecution to prove that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.[73]

The record, however, is bereft of any showing that the prosecution was able to establish the justifiable ground on why the apprehending team did not comply with the guidelines set forth in Sec. 21, R.A. No. 9165, and to prove that the integrity and value of the seized evidence had nonetheless been preserved. Since the justifiable ground for noncompliance was not proven as a fact, the Court cannot presume what these grounds are or that they even exist.[74] Unquestionably, the first link in the chain of custody in this case was inherently weak causing it to irreversibly break from the other links. With the absence of the first link, there can no longer be a chain of custody to speak of; hence, it becomes immaterial to dwell on the succeeding links.

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[73] *People v. Año*, G.R. No. 230070, 14 March 2018.

[74] Id.

Under the principle that penal laws are strictly construed against the government, stringent compliance with Sec. 21, R.A. No. 9165 and its IRR is fully justified.[75] The truth that the prosecution failed to prove with resolute accuracy that the dangerous drugs presented in court as evidence against the accused-appellants were those seized from them, and the justifiable ground for the apprehending team's noncompliance with Sec. 21 of R.A. No. 9165, heavily weigh against a finding that the guilt of the accused-appellants were proven beyond reasonable doubt. Stated otherwise, the breaches in the procedure committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus delicti* had been compromised.[76] The Court, therefore, has no option but to acquit.

The Court lauds the untiring and unrelenting efforts of the drug enforcement agencies and the prosecutorial service in their arduous task to lessen if not totally eradicate the proliferation of prohibited drugs in the country and to arrest their pernicious effects on our countrymen, especially the youth. Notwithstanding, it will not be tiresome for the Court to tenaciously call the attention of these agencies to be prudent in the performance of their duties and to scrupulously observe the laws as they do so. It must be emphasized that the Court will not hesitate to uphold the accused's constitutional right to be presumed innocent over his conviction for a crime which has not been proven beyond reasonable doubt.

WHEREFORE, in view of the foregoing, we **REVERSE** and **SET ASIDE** the 29 November 2013 Decision and 25 April 2014 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 05531. Accused-appellants Manuel Ferrer *y* Remoquillo, Kiyaga Macmod *y* Usman, and Dimas Macmod *y* Mama are hereby **ACQUITTED** of the crime charged against them for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered **IMMEDIATELY RELEASED** from detention unless they are otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Corrections is directed to report to the Court the action he will have taken within five (5) days from receipt of this Decision.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

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75 *People v. Arposeple*, supra note 46.
76 Id.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296,
The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

JUN 29 2018