



Republic of the Philippines  
Supreme Court  
Baguio City

SUPREME COURT OF THE PHILIPPINES  
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**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 241950**

**Present:**

CARPIO, J., *Chairperson,*  
PERLAS-BERNABE,\*  
CAGUIOA,  
REYES, J. JR., and  
LAZARO-JAVIER, JJ.

- versus -

**ARCADIO MALABANAN y**  
**PERALTA and NORMAN QUITA**  
**y QUIBIDO,**  
Accused-Appellants.

**Promulgated:**

**10 APR 2019**

X ----- *MM Cabalagorogato* ----- X

**DECISION**

**REYES, J. JR. J.:**

This is an appeal from the March 26, 2018 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08851, which affirmed the November 4, 2016 Judgment<sup>2</sup> of the Regional Trial Court, Calamba City, Branch 37 (RTC) in Criminal Case No. 22175-2014-C, finding accused-appellants Arcadio Malabanan y Peralta (Malabanan) and Norman Quita y Quibido (Quita) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

\* On leave.  
<sup>1</sup> Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Celia C. Libre-Leagogo and Samuel H. Gaerlan, concurring; *rollo*, pp. 2-20.  
<sup>2</sup> Penned by Presiding Judge Caesar C. Buenagua; *CA rollo*, pp. 49-62.

### The Facts

In an Information dated February 27, 2014, Malabanan and Quita, together with another co-accused Roque Heredia (Heredia), were charged with violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the information reads:

That on or about 12:30 a.m. of 25 February 2014[,] at Brgy. Pansol, Calamba City[,] and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another[,] without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur-buyer a quantity of Methamphetamine Hydrochloride, otherwise known as “shabu,” a dangerous drug, having a total weighing [sic] of 0.17 grams[,] in violation of the aforementioned law.

CONTRARY TO LAW.<sup>3</sup>

During their arraignment on May 8, 2014, accused-appellants and Heredia pleaded “Not Guilty.”<sup>4</sup> Heredia died while the case before the RTC was on-going.<sup>5</sup>

### *Evidence for the Prosecution*

On February 25, 2014, the Calamba City Police received a tip from a confidential informant (CI) that accused-appellants and Heredia were selling drugs at Heredia’s house. Immediately, a buy-bust operation was planned in coordination with the Philippine Drug Enforcement Agency (PDEA). It was agreed that Police Officer 1 Alvin Santos (PO1 Santos) would act as the poseur-buyer and that he would call another member of the buy-bust team as the pre-arranged signal to effect the arrest of the targets. PO1 Santos was also given two ₱500 bills as marked money.<sup>6</sup>

Once inside Heredia’s home, the CI introduced PO1 Santos to Heredia and to accused-appellants. When the CI told the group that PO1 Santos wanted to buy *shabu*, Quita asked how much he wanted, to which the police operative replied that he would buy ₱1,000.00 worth of *shabu*. PO1 Santos

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<sup>3</sup> *Rollo*, p. 3.

<sup>4</sup> *CA rollo*, p. 49.

<sup>5</sup> *Id.* at 62.

<sup>6</sup> *Rollo*, pp. 4.

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then handed the marked money to Malabanan, who, in turn, gave the same to Heredia, who handed a plastic sachet to PO1 Santos.<sup>7</sup>

After receiving the plastic sachet, PO1 Santos performed the pre-arranged signal to the other members of the team. Seeing the other police officers approaching, he then introduced himself as a police officer and held Heredia. The other members of the buy-bust team arrested accused-appellants. PO1 Santos searched Heredia and recovered four plastic sachets. He marked all the seized plastic sachets in the presence of Heredia and accused-appellants.<sup>8</sup>

After the arrest, Heredia and accused-appellants were brought to the barangay hall, where police officers recorded the incident in the barangay blotter and conducted a physical inventory of the items recovered from the operation. Thereafter, police officers brought Heredia and accused-appellants to the police station. PO1 Santos prepared a police blotter and called the representatives from the media and the Department of Justice (DOJ), but only the representative from the latter arrived. Then, he made a request for examination and brought the specimens to the crime laboratory. The examination conducted resulted positive for *shabu*.<sup>9</sup>

### *Evidence for the Defense*

On February 25, 2014, at around 12:30 P.M., Quita was at the house of a certain Tata Adeng at Maharlika, Brgy. Bagong Kalsada, Calamba City because the latter had asked help in cutting a banana tree. After cutting the said tree, he rested and fell asleep. Sometime later, a group of men wearing civilian clothes woke up Quita and hit his back with a firearm. He was then ordered to lay on the ground where he was frisked and tied with a rope. Later, Quita was boarded in a vehicle where he saw Heredia and Malabanan. Then, they were brought to the barangay hall of Brgy. Pansol, where their names were taken and were shown small plastic sachets. Subsequently, Heredia, Quita and Malabanan were brought to the police station, and then to the city hall.<sup>10</sup>

Meanwhile, on the same date, Malabanan was on his way to Laguna de Bay to go fishing when a van stopped in front of him at the Maharlika Subdivision. Two men alighted from the vehicle and held him while poking a gun at him. Malabanan was then brought to a hut ten meters away from where he was stopped. There, he was ordered to lie down and was interrogated where he hid the *shabu*. The two men stepped on Malabanan's

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<sup>7</sup> Id.

<sup>8</sup> Id. at 4-5.

<sup>9</sup> Id. at 5.

<sup>10</sup> Id. at 6-7.

back when he failed to give a satisfactory answer. He was then returned to the van and brought to the city hall.<sup>11</sup>

### ***The RTC Ruling***

In its November 4, 2016 Judgment, the RTC convicted accused-appellants for violating Section 5, Article II of R.A. No. 9165. The trial court ruled that all the elements for the crime of illegal sale of dangerous drugs are present. It noted that PO1 Santos positively and clearly identified the individual participation of accused-appellants in the consummation of the illegal transaction. The RTC disregarded accused-appellants' defense of denial and frame-up for their failure to establish any ill motive against the prosecution witnesses. The trial court explained that in the absence of any evidence of ill will, credence is afforded to the testimony of police officers for they are presumed to have performed their duties in a regular manner.

The RTC upheld the integrity of the drugs seized from accused-appellants as the prosecution was able to establish the chain of custody over the seized items. The trial court noted that the prosecution was able to account for each link in the chain of custody, from the moment the alleged drugs were recovered from accused-appellants until its presentation in court. As such, the RTC explained that deviation from the procedure prescribed under Section 21 of R.A. No. 9165 was not fatal to the prosecution. The trial court expounded that so long as the evidentiary value of the seized items are preserved, non-compliance under justifiable grounds shall not render void and invalid the seizure of illegal drugs. The dispositive portion reads:

**IN VIEW OF THE FOREGOING**, the Court finds the accused, **ARCADIO MALABANAN y PERALTA & NORMAN QUITA y QUIBIDO GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II of Republic Act 9165. The accused are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and TO PAY A FINE OF FIVE HUNDRED THOUSAND (P500,000.00) PESOS**.

The Branch Clerk of Court is hereby ordered to turn-over the methamphetamine hydrochloride (shabu) subject of this case to PDEA for proper disposition and destruction.

**SO ORDERED.**<sup>12</sup>

Aggrieved, accused-appellants appealed before the CA.

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<sup>11</sup> Id. at 7.

<sup>12</sup> CA rollo, p. 62.

### ***The CA Ruling***

In its assailed March 26, 2018 Decision, the CA upheld accused-appellants' conviction for violating Section 5, Article II of R.A. No. 9165. The appellate court posited that based on PO1 Santos' categorical and straightforward testimony, the prosecution sufficiently established the elements of the crime charged as well as the fact that a valid buy-bust operation was conducted. It explained that a buy-bust operation is a valid and effective mode of apprehending drug pushers, provided, it is carried out with due regard for constitutional and legal safeguards. Because accused-appellants were caught as a result of a legitimate buy-bust operation, the appellate court upheld the validity of their arrest and resulting search and seizure of illegal drugs.

On the other hand, the CA disregarded accused-appellants' contention that they should be acquitted on the ground that the police officers failed to comply with Section 2-6 of the 2014 Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation regarding the marking of the evidence with the date, time and place where it was seized and found. The appellate court noted the same was not required under Section 21 of R.A. No. 9165 and that any violation of the said Manual is strictly between the police officer concerned and the Philippine National Police — it being irrelevant to the prosecution of illegal sale of dangerous drugs. In addition, it noted that any deviation from the Manual committed by the police is inconsequential considering that the prosecution had adequately shown that the integrity and evidentiary value of the seized items were duly preserved.

As to the lack of a representative from the DOJ and the media, and an elected public official during inventory, the CA found the same immaterial because the integrity and evidentiary value of the seized drugs had been preserved. The appellate court reiterated that non-compliance with Section 21 of R.A. No. 9165 is not fatal so long as the integrity and evidentiary value of the seized items had been properly preserved by the apprehending officers. The CA agreed that the prosecution had sufficiently established an unbroken chain of custody beginning from the arresting officer to the forensic chemist for examination, and finally to its subsequent presentation in court during trial. It ruled:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**.

Accordingly, the appealed **Judgment dated 04 November 2016** of the Regional Trial Court, Branch 37, Calamba City, in Criminal Case No. 22175-2014-C, finding both appellants Arcadio Malabanan y Peralta and Norman Quita y Quibido guilty beyond reasonable doubt of violation of

Section 5, Article II of Republic Act No. 9165, is hereby **AFFIRMED *in toto***.

**SO ORDERED.**<sup>13</sup>

Hence, this appeal, raising:

### **The Issue**

WHETHER ACCUSED-APPELLANTS ARE GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTION 5, ARTICLE II OF R.A. NO. 9165

### **The Court's Ruling**

The appeal is meritorious.

In the prosecution of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven with moral certainty: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and its payment.<sup>14</sup> The illegal narcotics are the *corpus delicti* of the offense of illegal sale of dangerous drugs such that it is primordial that the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit and must be proven with the same degree of certitude necessary to sustain a guilty verdict.<sup>15</sup> Conviction is on shaky grounds if there is lingering doubt on the identity of the drugs in question.<sup>16</sup>

In *People v. Suan*,<sup>17</sup> the Court stressed the significance of removing any uncertainty as to the identity and integrity of the drugs presented in court:

**Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug.** In *People v. Magat*, we held that the existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crime. **In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.** Of paramount importance therefore in these cases is that the identity of the

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<sup>13</sup> *Rollo*, pp. 18-19.

<sup>14</sup> *People v. Lumaya*, G.R. No. 231983, March 7, 2018.

<sup>15</sup> *People v. Barba*, 611 Phil. 330, 337 (2009).

<sup>16</sup> *Id.*

<sup>17</sup> 627 Phil. 174 (2010).

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dangerous drug be likewise established beyond reasonable doubt.<sup>18</sup>  
(Emphases supplied; citations omitted)

The necessity of preserving and maintaining the integrity and identity of the items recovered from an accused in drug cases is brought about by the very essence and characteristics of illegal narcotics. Illegal drugs by its nature are not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.<sup>19</sup> Thus, it is imperative that the prosecution remove all doubts as to the identity and integrity of the drugs as any aspersions thereto, engenders a belief that what may have been presented in court were not the same drugs recovered from the accused, or worse, if drugs had been really seized from the suspect.

In order to alleviate fears that the identity and integrity of the drugs seized had been compromised, it is essential that the prosecution show an unbroken chain of custody over the same.<sup>20</sup> Particularly, there must be evidence establishing: (a) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (b) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (c) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (d) the turnover and submission of the marked illegal drugs seized from the forensic chemist to the court.<sup>21</sup>

Statutorily, the chain of custody rule is outlined in Section 21 of R.A. No. 9165, prescribing the procedure police operatives must observe in the conduct of drug-related operations. In particular, Section 21(1) reads:

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

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected

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<sup>18</sup> Id. at 188.

<sup>19</sup> *People v. Climaco*, 687 Phil. 593, 604 (2012).

<sup>20</sup> *Belmonte v. People*, 811 Phil. 844, 856 (2017).

<sup>21</sup> *People v. Balubal*, G.R. No. 234033, July 30, 2018.

public official who shall be required to sign the copies of the inventory and be given a copy thereof;

On the other hand, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 supply additional details to the procedures under Section 21 as well as a saving clause in case of substantial compliance, 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:

(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[.]

In sum, the law requires that the seized drugs must be inventoried and photographed immediately after seizure and that the same must be conducted in the presence of the accused and three other witnesses, namely: (a) a representative from the media; (b) representative from the DOJ; and (c) an elected public official. In *People v. Barte*,<sup>22</sup> the Court recognized the necessity of Section 21 of R.A. No. 9165 to curtail abuses in the conduct of anti-drug operations, to wit:

It is a matter of judicial notice that buy-bust operations are “susceptible to police abuse, the most notorious of which is its use as a tool for extortion.” **The high possibility of abuse was precisely the reason why the procedural safeguards embodied in Section 21 of R.A.**

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<sup>22</sup> 806 Phil. 533 (2017).



**No. 9165 have been put up as a means to minimize, if not eradicate such abuse.** The procedural safeguards not only protect the innocent from abuse and violation of their rights but also guide the law enforcers on ensuring the integrity of the evidence to be presented in court.<sup>23</sup> (Emphasis supplied; citation omitted)

The procedure outlined in Section 21 of R.A. No. 9165 fortifies the first two links in the chain of custody with the goal of making them foolproof against adulteration and planting of evidence.<sup>24</sup> Particularly, the Court in *People v. Mendoza*,<sup>25</sup> emphasized the importance of the presence of the required witnesses in the conduct of the marking and inventory of the seized drugs, to wit:

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21 (1), *supra*, were dire as far as the Prosecution was concerned. Without 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 sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.<sup>26</sup>

The procedure set forth under Section 21 of R.A. No. 9165 serves a two-fold purpose. *First*, it protects individuals from unscrupulous members of the police force who are out to brandish the law on the innocent for personal gain or otherwise. *Second*, a faithful compliance of Section 21 of R.A. No. 9165 benefits the police and the entire justice system as it assures the public that the accused was convicted on the strength of uncompromised and unquestionable evidence. It dispels any thought that the case against the accused was merely fabricated by the authorities.

As narrated by the prosecution: the physical inventory was conducted in the barangay hall of Brgy. Pansol; the group thereafter proceeded to the Calamba Police Station; there, they called for the representatives from the media and the DOJ; and only a representative from the DOJ arrived. Thus, it is readily apparent that at the time the items seized from accused-appellants were physically inventoried, there were no representatives from both the DOJ and the media as the police only called for them after the inventory was conducted. The courts *a quo*, however, do not find such deviation from the

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<sup>23</sup> Id. at 541-542.

<sup>24</sup> *People v. Que*, G.R. No. 212994, January 31, 2018.

<sup>25</sup> 736 Phil. 749 (2014).

<sup>26</sup> Id at 764.

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prescribed procedure fatal, because the integrity and identity of the drugs seized were preserved.

It bears emphasizing that the presence of the insulating witnesses is not a hollow requirement. It is of primordial importance as it lends another layer of legitimacy to the conduct of buy-bust operation. Coupled with the rule that the marking of the seized drugs be marked in the presence of the accused, the additional witnesses ensure that it could be concluded with moral certainty that what was presented in court are the same drugs recovered from suspected drug personalities. If the identity and integrity of the seized drugs are questionable at its inception, then, the manner in which they are subsequently handled becomes irrelevant as lingering doubt would always follow the *corpus delicti*.

The Court recognizes that strict compliance with the requirements of Section 21 of R.A. No. 9165, is not always possible as actual ground conditions may render its compliance impractical or place the success of the entire operation in jeopardy. The IRR of R.A. No. 9162, which had been incorporated in R.A. No. 10640, provides that non-compliance of the procedure for justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team shall not render void and invalid the seizure of drugs and custody over them.

In *People v. Mama*,<sup>27</sup> the Court had explained that in order for the saving clause to apply, the prosecution must prove as fact the existence of justifiable grounds, to wit:

x x x. In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its 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 explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary 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.** (Citations omitted)

In other words, it is not enough for the prosecution to claim that deviation from the statutory procedure was warranted on account of the preservation of the integrity and identity of the drugs seized. It must be sufficiently established that justifiable grounds existed to warrant non-

<sup>27</sup> G.R. No. 237204, October 1, 2018.

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compliance because the courts cannot presume that the departure from the prescribed rule was acceptable. In fact, in *People v. Año*,<sup>28</sup> the Court stressed that the prosecution has the positive duty to acknowledge divergence from the mandated procedure and provide a sufficient justification, viz.:

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. **As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

In addition, it must also be shown that earnest efforts had been undertaken to secure the attendance of these witnesses. In *People v. Arciaga*,<sup>29</sup> the Court had explained that there must be serious attempts to obtain the presence of witnesses in buy-bust operations considering that police officers are ordinarily given time to prepare for them, to wit:

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<sup>28</sup> G.R. No. 230070, March 14, 2018.

<sup>29</sup> G.R. No. 239471, January 14, 2019.

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Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, **mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.** These considerations arise from the fact **that police officers are ordinarily given sufficient time** — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — **to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.** (Emphasis supplied; citations omitted)

In the case at bench, it is undisputed that no representatives from the media and the DOJ were present during the inventory of the drugs. While it is true that eventually, a representative from the DOJ went to the police station, it was only when the police officers called for representatives from the DOJ and the media after the inventory had been performed. The belated appearance of the representative from the DOJ defeated the purpose of the witness requirement as the inventory had been completed.

In addition, it appears that not only was there a deviation from the witness requirement but a total absence thereof. While the physical inventory was being conducted in the barangay hall, only the head of the barangay *tanod* was present.<sup>30</sup> It is noteworthy that under Section 21 of R.A. No. 9165, the presence of any public official would not suffice as it clearly mandates that it be an **elected** public official. Thus, it is indubitable that at the time the drugs were physically inventoried none of the required witnesses were present.

Unfortunately, the breach in procedure was never explained or justified by the police officers. Likewise, they did not exert earnest efforts to secure the attendance of the witnesses as representatives for the media and the DOJ had been coordinated with only after the buy-bust operation had been performed. There was no showing that accused-appellants were a flight risk and that police officers had no time to coordinate with the representatives of the media and the DOJ before the operation was commenced. The unexplained and unjustified deviation from the chain of custody rule compromises the identity and integrity of the drugs allegedly recovered from the suspect.<sup>31</sup>

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<sup>30</sup> CA rollo, p. 41.

<sup>31</sup> *People v. Paming*, G.R. No. 241091, January 14, 2019.


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**WHEREFORE**, the March 26, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08851 is **REVERSED** and **SET ASIDE**. Accused-appellants Arcadio Malabanan y Peralta and Norman Quita y Quibido are **ACQUITTED**. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

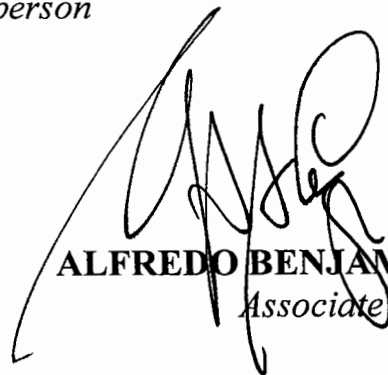
**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson*

**(On Leave)**  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

**ATTESTATION**

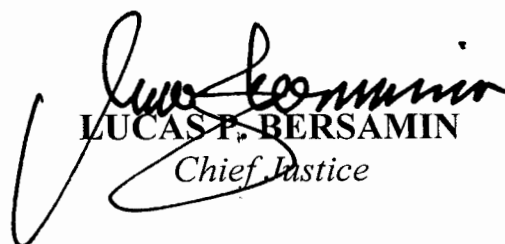
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
*Senior 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*