



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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**SECOND DIVISION**

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

**G.R. No. 228002**

Present:

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

- versus -

**OSCAR PEDRACIO GABRIEL, JR.,**  
Accused-Appellant.

Promulgated:

10 JUN 2019

X-----*Hilario Cabalag*-----X

**DECISION**

**CAGUIOA, J.:**

Before the Court is an ordinary appeal<sup>1</sup> filed by the accused-appellant Oscar Pedracio Gabriel, Jr. (Gabriel), assailing the Decision<sup>2</sup> dated November 12, 2015 (Assailed Decision) of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06450, which affirmed with modification the Decision<sup>3</sup> dated June 12, 2013 of the Regional Trial Court, Antipolo City, Branch 73 (RTC) in Criminal Case Nos. 03-25992 and 03-25993, finding Gabriel guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, as amended.

**The Facts**

Two (2) Informations<sup>5</sup> were filed against Gabriel, the accusatory portions of which read as follows:

\* On leave.  
<sup>1</sup> See Notice of Appeal dated December 15, 2015; *rollo*, pp. 13-15.  
<sup>2</sup> *Rollo*, pp. 2-12. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Nina G. Antonio-Valenzuela and Pedro B. Corales concurring.  
<sup>3</sup> *CA rollo*, pp. 35-38. Penned by Executive Judge Ronaldo B. Martin.  
<sup>4</sup> 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 (2002).  
<sup>5</sup> Records, pp. 1-2, 17-18.

**Criminal Case No. 03-25992**

That on or about the 27<sup>th</sup> day of June 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to poseur buyer PO1 Gangan, one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance, for and in consideration of the amount of P100.00, which, after the corresponding laboratory examination conducted by the PNP Crime Laboratory was found positive to the test for [Methamphetamine] Hydrochloride, also known as “shabu” a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>6</sup>

**Criminal Case No. 03-25993**

That on or about the 27<sup>th</sup> day of June, 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law, to possess of [*sic*] any dangerous drug, did, then and there willfully, unlawfully and knowingly have in his possession, custody and control one (7) [*sic*] heat-sealed transparent plastic sachet containing 0.019 [gram] of white crystalline substance, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave positive result to the tests for [Methamphetamine] [H]ydrochloride, also known as “Shabu”, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>7</sup>

During the arraignment on August 26, 2003, Gabriel pleaded not guilty to both offenses.<sup>8</sup> Thereafter, pre-trial and trial on the cases ensued.<sup>9</sup> The CA reproduced the prosecution’s narration of facts in its Appellee’s Brief<sup>10</sup> as follows:

About 2:15 in the afternoon of June 27, 2003, SPO1 Danilo Sumpay was on duty at the Antipolo City Police Station when their office received an information about illegal drug activities of appellant Oscar Gabriel in his house at No. 6 Claire Street, Barangay Cupang, Antipolo City. Acting on the information received, the Chief of Police, Col. Primitivo Tabajora, immediately formed a buy-bust team which was composed of SPO1 Sumpay as the team leader, PO1 Robert Gangan as the poseur[-]buyer, and PO3 Edmund Gacute and P/A Cristito Magsino as members. After a briefing, the team coordinated with the Philippine Drug Enforcement Agency (PDEA), prepared the buy-bust money and recorded their operation in their blotter book. Thereafter, the team proceeded to the target area.

<sup>6</sup> Id. at 1.

<sup>7</sup> Id. at 17.

<sup>8</sup> *Rollo*, p. 3.

<sup>9</sup> Id.

<sup>10</sup> *CA rollo*, pp. 45-61.

When the team reached Barangay Cupang, PO1 Gangan alighted from the vehicle and walked going to appellant's house while the other members of the team secretly followed him. Upon arriving at appellant's house, PO1 Gangan knocked on the door. Somebody asked who he was, to whom PO1 Gangan replied, "*pa iskor naman.*" PO1 Gangan was told to wait for a while. Thereafter, appellant opened the door and PO1 Gangan immediately handed to him the marked money. Thereafter, appellant handed to PO1 Gangan a plastic sachet of shabu. At that point, PO1 Gangan made the pre-arranged signal by scratching his head and the other members of the team proceeded to the scene and introduced themselves as police officers to appellant.

PO3 Edmund Gacute, who was the first to arrive at the scene, was able to recover the One Hundred Peso (P100) buy-bust money from appellant. When PO3 Gacute ordered appellant to empty his pocket, seven (7) more plastic sachets of shabu were recovered from him. After apprising appellant of his constitutional rights, the police officers arrested him and brought him to the Antipolo City Police Station. At the police station, the team executed a joint affidavit and put marking on the plastic packs recovered. The plastic sachet of shabu bought by PO1 Gangan from appellant was marked as "JR," while the seven (7) plastic sachets of shabu seized from appellant were respectively marked "OG-1" to "OG-7." Thereafter, they prepared the letter requesting for laboratory examination of the eight (8) plastic sachets containing white crystalline substance.

Forensic Chemist PCI Annalee Forro of the Eastern Police District Crime Laboratory Office was the one who received the letter request and said plastic sachets. Laboratory examination on the substance contained in all the eight (8) plastic sachets yielded positive result for methamphetamine hydrochloride, a dangerous drug.<sup>11</sup>

On the other hand, the CA cited the RTC's summary of Gabriel's version of the facts as follows:

• On the other hand, accused claimed he was merely walking near their house when several men alighted from a vehicle one of whom fired a shot and told him not to run. Accused averred he only recognized one of the men as Magsino and that he ran nonetheless because he was caught by surprise. According to accused, he was chased and arrested after being told that the men had a warrant of arrest against him but that no document was presented to him. Accused stated that he was boarded to the men's vehicle and brought to the police station where he was detained for selling shabu. x x x<sup>12</sup>

### **Ruling of the RTC**

After trial on the merits, the RTC, in its Decision<sup>13</sup> dated June 12, 2013 convicted Gabriel of the crimes charged. The dispositive portion of the said Decision states:

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<sup>11</sup> *Rollo*, pp. 3-4.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *CA rollo*, pp. 35-38.



WHEREFORE, premises considered, accused Oscar Gabriel Jr. y Pedraccio is found guilty of the offense charged in the two Informations and is sentenced to Reclusion Perpetua in Criminal Case No. 03-25992 as provided for by law. In Criminal Case No[.] 03-25993, accused Oscar Gabriel Jr. y Pedraccio is also found guilty and is hereby sentenced to suffer an Imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine of Php300,000.00 as provided for under Sec. 11 Par. (3) [o]f RA 9165, as amended.

SO ORDERED.<sup>14</sup>

The RTC reasoned that the three police officers categorically testified that Gabriel's arrest was by virtue of a valid buy-bust operation.<sup>15</sup> This was evident from the straightforward manner by which the poseur-buyer was able to narrate the specific details of the entrapment operation from the time they received a call from a concerned citizen, to the creation of the buy-bust team, to the actual conduct of the said police entrapment.<sup>16</sup> The RTC gave more weight to the testimony of the police officers than Gabriel's "self-serving" statements,<sup>17</sup> especially considering that "[a]ccused never testified that the apprehending officers held a grudge against him or had any reason for selecting him out of nowhere to face the instant charge."<sup>18</sup> The RTC thus concluded "that in the absence of proof to the contrary, the testimony of police officers carried with it the presumption of regularity in the performance of official functions."<sup>19</sup>

Aggrieved, Gabriel appealed to the CA.

### **Ruling of the CA**

In the Assailed Decision, the CA affirmed the RTC's conviction of Gabriel under Sections 5 and 11 of RA 9165.<sup>20</sup> The CA found Gabriel's defenses to be weak and self-serving and instead gave credence "to [the testimony of the] prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive x x x."<sup>21</sup>

As regards compliance with Section 21 of RA 9165, the CA held that the failure of the arresting officers to mark the seized items at the place of arrest or to conduct the required physical inventory and photographing of the evidence confiscated is not fatal, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending

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<sup>14</sup> Id. at 38.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id. at 37.

<sup>19</sup> Id.

<sup>20</sup> *Rollo*, p. 11.

<sup>21</sup> Id. at 9.

officer/team.<sup>22</sup> The CA likewise stated that the “integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.”<sup>23</sup> The CA concluded that as Gabriel failed to discharge his burden of proving that the evidence was tampered with, the presumption of regularity should prevail.<sup>24</sup>

Hence, the instant appeal.

### Issue

Whether the RTC and the CA erred in convicting Gabriel of the crimes charged.

### The Court’s Ruling

The appeal is meritorious. The Court acquits Gabriel for failure of the prosecution to prove his guilt beyond reasonable doubt.

In *People v. Dela Cruz*,<sup>25</sup> the Court explained:

In cases involving dangerous drugs, **the confiscated drug constitutes the very corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction.** It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.

In this regard, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation;** (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ),** all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.

The phrase “immediately after seizure and confiscation” means that **the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of**

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<sup>22</sup> Id. at 7.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> G.R. No. 234151, December 5, 2018.



**apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. **However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.**<sup>26</sup>

In the case at bar, the buy-bust team failed to comply with the requirements under Section 21 of RA 9165.

**First**, the arresting officers failed to mark and photograph the seized illegal drug at the place of arrest. PO1 Robert Gangan (PO1 Gangan), the poseur-buyer, testified:

Q: After the marked money was recovered from the arrested person, what happened next?

A: PO3 Edmund Gacute ordered the suspect to empty his pocket and he was able to find 7 more plastic sachets of shabu, Mam.

Q: After the suspect was found to have in his pocket 7 more plastic sachets, what happened next?

A: We told him his constitutional rights and the offense that he committed.

Q: After that what happened next?

A: We brought him to the station, Mam.

Q: At your station, what happened next?

<sup>26</sup> Id. at 6-7. Emphasis and underscoring supplied; citations omitted.



A: We executed an affidavit, Mam.

Q: After executing an Affidavit, what did you [do] next?

A: The evidence confiscated was submitted to Camp Crame Laboratory for laboratory examination.<sup>27</sup>

In fact, it appears that even at the police station, no inventory was prepared and no photographs were taken of the illegal drugs. SPO1 Danilo Sumpay (SPO1 Sumpay), on cross-examination, stated:

Q: I am asking you Mr. witness, did you prepare any written inventory of the items confiscated from the accused?

A: No, sir.

Q: How about taking pictures of the items confiscated together with the accused?

A: None.

Q: Did you made [sic] the markings on the sachets?

A: PO3 Gacute made the markings.

Q: The items confiscated were marked at the police station?

A: Yes, sir.<sup>28</sup>

Contrary to the findings of the RTC and the CA, Section 21 requires the apprehending team to conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation at the scene of apprehension, except when the same is impracticable. In *People v. Angeles*<sup>29</sup> (*Angeles*), the Court explained:

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. **It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. x x x**<sup>30</sup>

In the instant case, however, no explanation or justification was given on why the inventory and photographing were “not practicable” at the scene of the apprehension.

<sup>27</sup> TSN, February 10, 2005, pp. 10-11.

<sup>28</sup> TSN, November 6, 2008, pp. 6-7.

<sup>29</sup> G.R. No. 237355, November 21, 2018.

<sup>30</sup> Id. at 8. Emphasis supplied.



**Second**, none of the three required witnesses was present at the time of seizure and apprehension. The team was composed of SPO1 Sumpay, PO3 Edmund Gacute, PO1 Gangan, and P/A Cristito Magsino.<sup>31</sup> SPO1 Sumpay, on cross-examination, admitted:

Q: During the buy bust operation, did you secure the presence of any barangay official?

A: No, sir.

Q: How about any media?

A: No, sir.<sup>32</sup>

It is settled that the presence of the three required witnesses at the time of the apprehension and inventory is mandatory. In *People v. Tomawis*,<sup>33</sup> the Court explained the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the **insulating presence** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

<sup>31</sup> TSN, February 10, 2005, p. 7.

<sup>32</sup> TSN, November 6, 2008, p. 4.

<sup>33</sup> G.R. No. 228890, April 18, 2018.





To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”<sup>34</sup>

**Finally**, the buy-bust team proffered no explanation whatsoever to justify the non-compliance with the mandatory rules. In *Angeles*, the Court explained that “Section 21 of the IRR of RA 9165 provides that ‘noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.’ **For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.**”<sup>35</sup> In the instant case, the prosecution did neither.

In fact, the prosecution admits to having committed the following irregularities: (1) conducting the inventory at the police station without offering an explanation as to why it was not practicable at the place of the arrest; and (2) conducting the inventory without any of the required witnesses, namely a representative from the DOJ, a media representative, and an elective official.<sup>36</sup> Nevertheless, the RTC and the CA erroneously relied on the presumption that the police officers regularly performed their functions and convicted Gabriel for having failed to prove the police officers’ ill-motive.

In *People v. Catalan*,<sup>37</sup> the Court unequivocally stated that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused, *viz.*:

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, **mainly because the accused did not show that they had ill motive behind his entrapment.**

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of**

<sup>34</sup> Id. at 11-12. Emphasis and underscoring in the original; citations omitted.

<sup>35</sup> Supra note 29, at 16.

<sup>36</sup> CA rollo, p. 50.

<sup>37</sup> 699 Phil. 603 (2012).

**evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

**Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air.** To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.<sup>38</sup>

Contrary to the rulings of the RTC and the CA, the prosecution bears the burden of proving compliance with the procedure outlined in Section 21 of RA 9165. Both courts committed gross error in relying on the presumption of regularity as basis to convict Gabriel, just because he failed to show the buy-bust team's ill motive.

In view of the foregoing, Gabriel must be acquitted. As a result of the buy-bust team's many unexplained violations and deviations in the seizure, custody, and handling of the seized illegal drugs, the prosecution miserably failed to prove the *corpus delicti* of the offenses charged.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 12, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06450 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant OSCAR PEDRACIO GABRIEL, JR. is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>38</sup> Id. at 621. Emphasis supplied.

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

(On leave)  
**JOSE C. REYES, JR.**  
Associate Justice



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

**ATTESTATION**

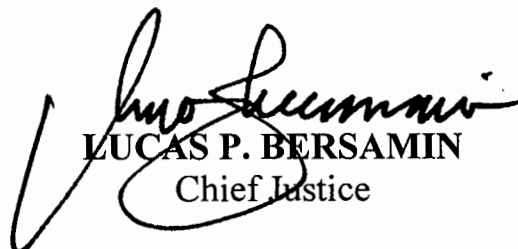
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
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

