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SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 239787

Present:

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

- versus -

EDWIN NIEVES y ACUAVERA
a.k.a. "Ading",
Accused-Appellant.

Promulgated:

19 JUN 2019

Atty. Catalog

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DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by accused-appellant Edwin Nieves y Acuavera (Nieves) assailing the Decision² dated February 7, 2018 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08983, which affirmed the Joint Decision³ dated June 17, 2016 of the Regional Trial Court of Iba, Zambales, Branch 70 (RTC) in Criminal Case Nos. RTC-7493-I and RTC-7494-I, finding Nieves guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, as amended.

The Facts

Two Informations were filed against Nieves in this case, the accusatory portions of which read as follows:

¹ See Notice of Appeal dated February 19, 2018, *rollo*, pp. 17-19.
² *Rollo*, pp. 2-16. Penned by Presiding Justice Romeo F. Barza, with Associate Justices Mario V. Lopez and Victoria Isabel A. Paredes concurring.
³ *CA rollo*, pp. 63-70. Penned by Judge Marifi P. Chua.
⁴ 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).

CRIM. CASE NO. RTC-7493-I

That on or about 9th day of July 2013 at about 1:00 o'clock in the afternoon, in Brgy. Lipay, Dingin, Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, sell Methylamphetamine Hydrochloride, a dangerous drug, placed in one (1) heat sealed transparent plastic sachet, containing 0.029 gram, which was subsequently marked as "RDA", without any lawful authority, permit nor prescription to sell the same from the appropriate agency.

CONTRARY TO LAW.⁵

CRIM CASE NO. RTC-7494-I

That on or about 9th day of July 2013 at about 1:00 o'clock in the afternoon, in Brgy. Lipay, Dingin, Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, when apprehended by the police officers, was found to have willfully, unlawfully and feloniously, use or introduce into his body Methylamphetamine, a dangerous drug, without being unlawfully (*sic*) allowed to use said substance.⁶

When arraigned, Nieves pleaded not guilty. Pre-trial and trial on the merits then ensued.

The prosecution's version, as summarized by the CA, is as follows:

PO1 Rudico D. Angulo ("PO1 Angulo") of the Philippine National Police, Iba Municipality Station, testified that on 09 July 2013, their Office conducted a buy-bust operation for the arrest of Accused-Appellant, who was infamous for being a drug pusher in Barangay Lipay Dingin, Iba, Zambales. The operation was conducted at around 1:00 o'clock in the afternoon along the road near Accused-Appellant's residence. After the preparation of the Pre-Operation Report, Coordination Form, the Request for Conduct of Dusting Powder on the money, and the marked bill worth Five Hundred Pesos (Php500.00), PO1 Angulo, the designated poseur-buyer, along with the Confidential Informant ("CI") and four (4) deployed personnel, carried out the said operation.

Upon identification of the Accused-Appellant, the CI and PO1 Angulo approached him. CI introduced PO1 Angulo as the buyer of the drug after which the latter handed to Accused-Appellant the marked money bearing his initials "RDA." Having received payment, Accused-Appellant pocketed the same and in turn, handed to PO1 Angulo a small plastic sachet containing a white crystalline substance. PO1 Angulo proceeded to perform the pre-arranged signal which prompted the four (4) personnel, all of whom were waiting a few meters away from the operation, to cause the arrest of Accused-Appellant. Subsequent to the arrest, PO1 Angulo affixed his initials on the plastic sachet. Upon reaching the police station, an inventory of the confiscated items were (*sic*) done in

⁵ Records, p. 2.

⁶ CA rollo, p. 64.



the presence of PO2 Wilfredo F. Devera ("PO2 Devera"), one of the officers during the operation, Department of Justice ("DOJ") Representative Asst. State Prosecutor Olivia V. Non, and Elected Barangay Official Bgy. Kagawad Victor Buenaventura.

To corroborate on the fact of the buy-bust operation and the subsequent apprehension of Accused-Appellant, PO2 Devera narrates that on 09 July 2013, at 1:00 o'clock in the afternoon, a buy-bust operation was conducted, specifically targeting Accused-Appellant. As one of the designated back-up personnel, he was tasked to proceed to the target area, wait for the execution of the pre-arranged signal, search the suspect after the transaction is consummated, and thereby arrest him upon reading his Constitutional rights. During the said operation, he confirms having personally seen the transaction between the CI, PO1 Angulo, and Accused-Appellant. Upon the execution of PO1 Angulo of the pre-arranged signal, PO2 Devera, along with the other back-up personnel, effected the arrest and frisked the suspect, finding the marked Five Hundred Peso (Php500.00) bill, one (1) One Hundred Peso (Php100.00) bill, one (1) lighter and one (1) flashlight in his possession. Accused-Appellant was subsequently brought to the police station where the items taken from his person were inventoried.

Police Chief Inspector Vernon Rey Santiago ("PCI Santiago"), a forensic chemist from the Zambales Provincial Crime Laboratory Office, affirms that their office had received a written request for drug test, for the application of dust powder on one (1) Five Hundred Peso (Php500.00) bill, for an ultraviolet test on the body of Accused-Appellant, and for a laboratory examination on a certain specimen weighing .029 [gram] contained in a heat-sealed transparent plastic sachet marked as "RDA." Aside from such written requests, the office likewise received the specimen and the marked bill itself. Anent the results, PCI Santiago attests that the results yielded positive for presence of ultraviolet fluorescent powder and that the specimen weighing .029 [gram] tested positive for Methylamphetamine Hydrochloride.⁷

On the other hand, the version of the defense, similarly summarized by the CA, is as follows:

Accused-Appellant alleges that on 09 July 2013, at around 1 o'clock in the afternoon, he was alone at the backyard of his house sweeping. During that time, he saw certain police officers coming towards him shouting "*wag kang tumakbo Jun Jun Nieves!*" He continued sweeping, ignoring such warnings as they were referring to his brother, Jun Jun. When the officers were near him, Accused-Appellant was surprised when they removed his belt, tied both his hands, and dragged him towards their parked vehicle. He was brought to Camp Conrado Yap where he was mauled. Also present in the Camp was the police officers' asset, Armin Sarmiento. The latter questioned Accused-Appellant's arrest instead of his brother, who was the actual perpetrator of the crime charged. Upon realizing their mistake, the police officers returned to Accused-Appellant's house to look for Jun Jun, but failed to locate his whereabouts.

⁷ *Rollo*, pp. 4-5.

Accused-Appellant was subsequently brought to the Iba Police Station where the same officers forced him to admit that he was his brother.

Accused-Appellant's wife Sheila Lynn D. Nieves ("Shiela") affirms that on 09 July 2013, at around 9 o'clock in the morning, she awoke to find her husband cooking. After eating breakfast and while sending her newborn to sleep, she recalls Accused-Appellant stepping outside to sweep in the backyard. Upon hearing several police officers, and having been informed by their neighbor Daisy Milano, she went outside of the house and saw them stopping her husband from sweeping and making him kneel on the ground. They asked him to remove his belt which they used to tie his hands. Alarmed, she went to her husband's side and demanded a reason for such abuse. In response, one of them took out a cellphone from his pocket and said that they were looking for a certain Jun Jun Nieves, to which she responded, "*hindi naman po si Jun Nieves ang kinukuha ninyo eh, si Edwin Nieves po yan, kaya pakawalan po ninyo ang asawa ko.*" The officer replied, "*sumunod na lang po kayo sa amin, dun nalang kayo magpaliwanag.*" Shortly after Accused-Appellant and the police officers left, Shiela rushed to the house of her parents-in-law to apprise them of her husband's arrest. They went to the camp only to find out that Accused-Appellant was already brought to the police station for further questioning.⁸

Ruling of the RTC

After trial on the merits, in its Joint Decision⁹ dated June 17, 2016, the RTC convicted Nieves of the crime of Illegal Sale of Dangerous Drugs, but acquitted him of the case for Use of Dangerous Drugs. The dispositive portion of the said Decision reads:

WHEREFORE, judgment is hereby rendered, finding accused Edwin Nieves y Acuavera alias "Ading" **GUILTY** beyond reasonable doubt for violation of Section 5 of Article II of R.A. 9165, (selling of dangerous drugs) and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand (Php500,000.00) pesos without subsidiary imprisonment in case of insolvency. Since accused has been in detention since July 9, 2013, his period of detention shall be credited in full.

FURTHER, Criminal Case No. RTC-7494-I is hereby **DISMISSED** since the accused is already convicted under Sec. 5 of Republic Act No. 9165.

FINALLY, the confiscated illegal drug subject matter of this case is forfeited in favor of the State and shall be disposed of accordingly.

SO ORDERED.¹⁰

⁸ Id. at 6-7.

⁹ CA rollo, pp. 63-70.

¹⁰ Id. at 69-70.



The RTC ruled that the prosecution proved that the chain of custody rule in drugs cases was followed by the police officers involved in this case. The RTC traced the chain of custody of the seized item from the place of apprehension to its transmission to court.¹¹ It also excused the absence of the media representative in the conduct of the inventory. It reasoned:

The absence of the media representative during the inventory was explained by PO2 Devera. He stated that media practitioners executed a letter (Exhibit "Q") refraining from any participation in the conduct of inventory of drugs. Nonetheless, the absence of the media representative may be excused under the situation since the subject drug was already marked right at the place of the incident and the inventory was done in front of the accused, State Prosecutor Non-Fiñones, Kagawad Buenaventura and PO1 Angulo. x x x¹²

Aggrieved, Nieves appealed to the CA.

Ruling of the CA

In the questioned Decision¹³ dated February 7, 2018, the CA affirmed the RTC's conviction of Nieves. The CA gave more credence to the testimony of the police officers that the buy-bust operation did happen. The CA viewed Nieves' defense as self-serving, and thus weak, especially as compared with the testimonies of prosecution witnesses. The CA likewise ruled that the chain of custody of the dangerous drugs was sufficiently proven to be unbroken. Thus:

Here, PO1 Angulo, as the poseur-buyer, testified that immediately upon confiscation of the plastic sachet containing *shabu*, he made the appropriate markings by placing his initials "RDA" on the same. Upon arrival at the police station, an inventory report was conducted in the presence of Accused-Appellant as well as a representative from the DOJ and the Barangay. Subsequently, no less than PO1 Angulo himself turned over the marked sachet to the Zambales Provincial Crime Laboratory together with a written request for its examination. To fortify the establishment of the links in the chain of custody, PCI Santiago, the forensic chemist of the said crime laboratory was presented in court and testified as to the fact of examination. The prosecution likewise proffered into evidence the chemistry report on the substance found in the marked sachet, yielding a positive result to the test for the presence of *shabu*. Finally, the same sachet bearing the initials of PO1 Angulo was also presented in court and was identified by PCI Santiago during his direct examination.¹⁴

Hence, the instant appeal.

¹¹ Id. at 67-68.

¹² Id. at 68-69.

¹³ *Rollo*, pp. 2-16.

¹⁴ Id. at 12-13.

Issue

For resolution of this Court is the issue of whether the RTC and the CA erred in convicting Nieves.

The Court's Ruling

The appeal is meritorious.

Nieves was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁵

It bears emphasis that in cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime.¹⁶ In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.¹⁷ While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,¹⁸ the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.¹⁹

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.²⁰ The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.²¹

In this connection, Section 21,²² Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the

¹⁵ *People v. Malana*, G.R. No. 233747, December 5, 2018, p. 5.

¹⁶ *People v. Reyes*, G.R. No. 225736, October 15, 2018, p. 7.

¹⁷ *Id.*, citing *People v. Guzon*, 719 Phil. 441, 451 (2013).

¹⁸ *Id.*, citing *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

¹⁹ *Id.*

²⁰ *People v. Guzon*, supra note 17, at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

²¹ *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

²² The said section reads as follows:

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



procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because with “the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”²³

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witness**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension**.²⁴ It is only when the same is not practicable that the 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.²⁵ In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**.²⁶ Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

²³ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

²⁴ *People v. Reyes*, supra note 16, at 8. Emphasis and underscoring supplied.

²⁵ IRR of RA 9165, Art. II, Sec. 21(a).

²⁶ *People v. Reyes*, supra note 16, at 8.

It is true that there are cases where the Court had ruled that 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, as the CA itself pointed out, 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.²⁷ The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.²⁸

In the present case, a careful perusal of the records would reveal that the supposed buy-bust operation was conducted ***without the presence of any of the three insulating witnesses***. In PO1 Rudico D. Angulo's (PO1 Angulo) and PO2 Wilfredo F. Devera's (PO2 Devera) *Pinagsamang Sinumpaang Salaysay ng Pag-Aresto*,²⁹ the aforementioned apprehending officers claimed that they were only accompanied by "*ilang operatiba ng PIBZPPO at ilang meyembro ng Iba MPS* [a few members of the PIBZPPO and other members of the Iba MPS]."³⁰ This fact was confirmed in both of their testimonies in court.³¹ PO2 Devera testified:

Q Now, Mr. Witness, you (*sic*) participation in this buy-bust operation was that you are the arresting officer/back-up officer, correct?

A Yes, Sir.

Q You said that you were ten (10) meters away from where the alleged transaction of buying and selling drug was happening?

A Yes, Sir.

Q And you also said you (*sic*) were other operatives coming from the PNP of Iba, Zambales?

A Yes, Sir.

Q To be exact, Mr. Witness, how many were you at that time?

A I cannot anymore recall how many are we, maybe there were five (5) of us, Sir.

Q So, there were five (5) of you?

²⁷ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

²⁸ *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

²⁹ Records, pp. 8-9.

³⁰ Id. at 8.

³¹ See TSN, June 17, 2014, p. 13, records, p. 105; TSN, August 5, 2014, p. 11, id. at 134.



A Yes, Sir.³²

Further, the inventory was subsequently conducted at the police station without any explanation as to why it was impracticable to do the same at the place of apprehension. More importantly, only two of the three required witnesses — the DOJ representative and the elective official — were present in the conduct of inventory, as evidenced by the signatures in the *Receipt/Inventory of Property Seized*.³³

Curiously, PO1 Angulo testified that there was a media representative present in the conduct of the inventory, only that he was unable to remember his/her name:

Q And you were able to secure the presence of a representative from the DOJ?

A Yes, Sir.

Q But you were not able to present that inventory because it was a week day?

A Yes, Sir.

Q **But you were not able to secure the presence of a media representative, is that correct?**

A **There was, Sir.**

Q **What's the name of that media representative?**

A **I could no longer recall, Sir.**

Q **But you remember him or her signing the inventory?**

A **Yes, Sir if I will able (sic) to see that.**³⁴ (Emphasis supplied)

Upon continuation of the presentation of prosecution witnesses two months later, PO2 Devera then testified that there was no media representative. He explained, however, that this was because the media representatives in the area executed a written manifesto requesting that they be excluded from anti-drug operations. PO2 Devera testified:

Q Why did you not secure any representative from the media, Mr. Witness?

A I do not know, Sir but they executed a letter.

Q Because of that letter, you did not even try to contact anymore any media representative?

³² TSN, August 5, 2014, p. 11, id. at 134.

³³ Records, p. 20.

³⁴ TSN, June 17, 2014, pp. 17-18, records, pp. 109-110.

- A Yes, Sir.
- Q Do you know every media practitioner in Zambales?
- A Some of them, Sir.
- Q Am I also correct to say, Mr. Witness that not all of them affixed their signatures in this letter that you just mentioned in your direct testimony, correct?
- A Yes, Sir.
- Q And yet you did not try to secure the presence of those media practitioners who did not sign this letter, correct?
- A Yes, Sir.³⁵

The “written manifesto” referred to by PO2 Devera reads:

The Provincial Director
Philippine National Police
Zambales Police Provincial Office
Camp Conrado D. Yap, Iba, Zambales

Sir:

WE are members representing media group covering the Zambales province desiring to clear out issues concerning drug operations in the province.

WHEREAS, we members of the Zambales media, do hereby appeal our position with the members of Zambales PNP to spare our ranks from witnessing arrested drug pushers and other matters related to it.

WHEREAS, all mediamen whose name and signature appears hereon signifies that effective immediately, will cease and desist from signing documents pertinent to anti-drug operations in the province pending settlement of their resolution.

HENCE, we hereby affix our signature to assert our position concerning said media interest on said issue.³⁶

The “written manifesto” above, however, did not justify the police officers’ deviation from the prescribed procedure. *First*, the “written manifesto” was undated, and was never even mentioned in any of the affidavits and documents related to the case prior to PO2 Devera’s testimony. It was only introduced after it was pointed out during PO1 Angulo’s testimony that no media representative was present in the inventory. *Second*, only seven (7) media practitioners signed the “written manifesto” and it was indicated therein that it binds only “all mediamen whose name and signature appears thereon.” There is no proof, or even an

³⁵ TSN, August 5, 2014, p. 16, id. at 139.

³⁶ Records, p. 169.



intimation, that these signatories constitute all of the media practitioners in Iba, Zambales.

Third, and most importantly, the requirements of the law cannot be set aside by the simple expedient of a “written manifesto”. It is important to stress that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,³⁷ the Court elucidated on 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*,³⁸ 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 to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”³⁹

³⁷ G.R. No. 228890, April 18, 2018.

³⁸ 736 Phil. 749, 764 (2014).

³⁹ *People v. Tomawis*, supra note 37, at 11-12.



It bears stressing that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance.⁴⁰ The Court, in *People v. Umipang*,⁴¹ reminds:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. **A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.**⁴² (Emphasis and underscoring supplied)

In addition, the Court *en banc* unanimously held in the case of *People v. Lim*⁴³ that:

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of

⁴⁰ *People v. Reyes*, supra note 16, at 13.

⁴¹ 686 Phil. 1024 (2012).

⁴² Id. at 1052-1053.

⁴³ G.R. No. 231989, September 4, 2018.

confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.⁴⁴ (Emphasis in the original; underscoring supplied)

It is apparent that a “written manifesto” is not included in the above list, nor is it a cause that may be considered similar or akin to the foregoing.

At this juncture, the Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law.⁴⁵ Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence would again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of *shabu* that was evidence herein of the *corpus delicti*. Thus, this failure 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.⁴⁶

Concededly, Section 21 of the IRR of RA 9165 provides 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.” 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.⁴⁷ Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.⁴⁸ As the Court explained in *People v. Reyes*:⁴⁹

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the**

⁴⁴ Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

⁴⁵ *People v. Ramos*, 791 Phil. 162, 175 (2016).

⁴⁶ *People v. Mendoza*, supra note 38, at 764.

⁴⁷ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

⁴⁸ See *People v. Sumili*, 753 Phil. 342, 350 (2015).

⁴⁹ 797 Phil. 671 (2016).

evidence of the *corpus delicti*. With the chain of custody having been compromised, the accused deserves acquittal. x x x⁵⁰ (Emphasis supplied)

What further militates against a finding of guilt beyond reasonable doubt for Nieves in this case is the apparent inconsistencies between the testimonies of PO1 Angulo and PO2 Devera on the conduct of the supposed buy-bust operation itself. PO1 Angulo claimed numerous times that he was the poseur-buyer.⁵¹ Yet, he later on testified on cross-examination that it was the confidential informant who was transacting with Nieves, but that the marked money was in his possession.⁵² PO2 Devera, who was supposedly watching from a distance of mere 10 meters, testified, on the other hand, that it was the confidential informant who bought the *shabu* from Nieves, and who likewise handed the marked money to the latter.⁵³

These discrepancies, along with the inconsistency in their testimonies on whether a media representative was present in the conduct of the inventory, cast doubt on the reliability of their testimonies as witnesses for the prosecution. The RTC and the CA thus erred in their wholesale acceptance of their testimonies to justify Nieves' conviction.

In addition, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.⁵⁴ The RTC and the CA therefore erred in simply brushing aside Nieves' defense of mistake in identity, especially when the testimonies of both Nieves and his wife were consistent in that the police officers were initially trying to apprehend Nieves' brother instead of him. In this connection, the Court reminds the trial courts to exercise extra vigilance in trying drug cases, and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.

Finally, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the

⁵⁰ Id. at 690.

⁵¹ *Pinagsamang Sinumpaang Salaysay ng Pag-Aresto*, records, p. 8; Affidavit dated June 16, 2014, p. 2, records, p. 86; Direct Testimony in TSN, June 17, 2014, p. 6, records, p. 98.

⁵² TSN, June 17, 2014, p. 16, id. at 108.

⁵³ TSN, August 5, 2014, pp. 11, 14, id. at 134, 137.

⁵⁴ *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.⁵⁵

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* has thus been compromised. Furthermore, the inconsistencies in the police officers' testimonies cast reasonable doubt on Nieves' guilt. In light of these, Nieves must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 7, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 08983 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Edwin Nieves y Acuavera is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the 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.

Further, the National Police Commission is hereby **DIRECTED** to **CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted in this case.

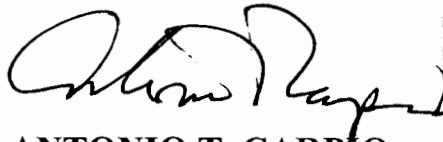
SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁵⁵ *People v. Otico*, G.R. No. 231133, June 6, 2018, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.

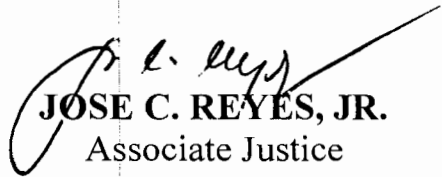
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



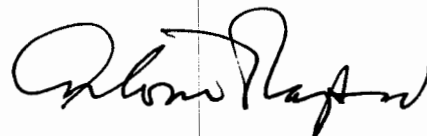
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

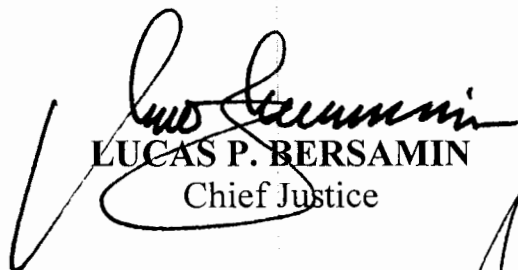
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

