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Wilfredo Y. Lantian
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Division Clerk of Court
Third Division

JAN 11 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 230228

Present:

- versus -

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

MANUEL DELA ROSA Y
LUMANOG @ "MANNY",
Accused-
Appellant.

Promulgated:

December 13, 2017

Wilfredo Y. Lantian

X ----- X

DECISION

GISMUNDO, J.:

On appeal is the Decision,¹ dated August 12, 2016, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06607, which affirmed the Decision,² dated November 19, 2013, of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 39 (RTC) in Criminal Case No. CR-09-9515 finding accused-appellant Manuel dela Rosa y Lumanog (*accused-appellant*) guilty of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

In an Information,³ dated May 3, 2009, accused-appellant was charged with the crime of illegal sale of marijuana weighing 0.682 gram. On July 22, 2009, he was arraigned and he pleaded "not guilty."⁴ Thereafter, trial ensued.

* On official leave.

¹ Penned by Associate Justice Edwin Sorongon with Associate Justice Ricardo R. Rosario and Associate Justice Marie Christine Azcarraga-Jacob, concurring; *rollo*, pp. 2-13.

² Penned by Judge Manuel C. Luna, Jr.; *CA rollo*, pp. 244-250.

³ Records, pp. 1-3.

⁴ *Id.* at 116.

MJL

Version of the Prosecution

The prosecution presented IO1 Noe Briguel (*IO1 Briguel*), PCI Rhea Fe Dela Cruz Alviar (*PCI Alviar*) and IO1 Ed Bryan Echavaria (*IO1 Echavaria*) as its witnesses. Their combined testimonies tended to establish the following:

On March 28, 2009, at around 9:00 o'clock in the morning, a confidential informant reported to PCI Marijane Ojastro (*PCI Ojastro*) of the Philippine Drug Enforcement Agency Regional Office IV-B (*PDEA IV-B Office*) located at Filipiniana Complex, Calapan City, that accused-appellant was selling marijuana at White Beach, Puerto Galera, Oriental Mindoro. The informant said that he could introduce an agent to accused-appellant as a buyer of marijuana.

Based on the said information, PCI Ojastro directed the conduct of a buy-bust operation against accused-appellant with IO1 Mary Grace Cortez as the team leader. IO1 Briguel was designated as poseur-buyer using a ₱200.00 bill bearing serial numbers EC235898 and a ₱100.00 bill bearing serial numbers QC609916, which were marked with "NSB."⁵ IO1 John Rick Jabano (*IO1 Jabano*) and IO1 Echavaria were assigned as arresting officers. A Pre-Operation Report⁶ was prepared.

The team left for Puerto Galera at around 1:00 o'clock in the morning of March 29, 2009 and they stayed for a while in Sabang. IO1 Briguel, however, testified that they arrived at Puerto Galera on March 30, 2009. At about 3:00 o'clock in the afternoon of that day, IO1 Briguel and the informant proceeded to the Island Tattoo shop while the other operatives positioned themselves in the area.

Arriving thereat, the informant introduced IO1 Briguel to accused-appellant. IO1 Briguel asked accused-appellant, a tattoo artist, to put a henna tattoo on his right shoulder. As accused-appellant was doing the tattoo, IO1 Briguel asked him: "*Manny, pwede bang umiskor?*" to which he replied: "*Meron.*" IO1 Briguel told accused-appellant that he was going to buy ₱300.00 worth of drugs, and handed the marked money to accused-appellant, who, in turn, handed to IO1 Briguel folded dried banana leaves containing suspected dried marijuana leaves. Thus, IO1 Briguel made the pre-arranged signal of removing the handkerchief wrapped around his head. Immediately, IO1 Jabano and IO1 Echavaria arrived and arrested accused-appellant. IO1 Briguel frisked him and the marked money was recovered from him.

⁵ Id. at 50.

⁶ Id. at 47.

Subsequently, accused-appellant was boarded into the service vehicle of the PDEA to avoid any commotion at the shop. While inside the vehicle, IO1 Briguel marked the seized marijuana with his initials and the date of the arrest. He then testified that he placed the suspect dried marijuana leaves in his pocket.

The team then proceeded back to the PDEA IV-B Office at Calapan City, which was 54 kilometers away from Puerto Galera. There, IO1 Briguel conducted the Inventory,⁷ which was witnessed by Barangay Chairperson Anacleto Vergara (*Brgy. Captain Vergara*) and media representative Dennis Nebrejo (*Nebrejo*). Photographs were likewise taken during the marking and inventory of the seized item.

IO1 Briguel then brought the suspected marijuana and the Request for Laboratory Examination⁸ to the Philippine National Police (*PNP*) Crime Laboratory Regional Office in Camp Efigenio C. Navarro, Calapan City for forensic examination. Based on Chemistry Report No. D-010-09⁹ prepared by PCI Alviar, the specimen weighed 0.682 gram and it tested positive for marijuana.

Version of the Defense

The defense presented accused-appellant as its sole witness. He testified that on the date of the said arrest, he was inside his tattoo shop, located beside a bar and restaurant at White Beach, Puerto Galera, Oriental Mindoro. While accused-appellant was attending to several customers, a man suddenly approached him and asked if he was Manny. When he replied in the affirmative, the said man asked him to go with him. When accused-appellant refused, the man pulled out a .45 caliber pistol from his waist and threatened him that he would make a scene at his shop. Reluctantly, accused-appellant accompanied the man to a van parked away from his shop. While inside the van, the man handcuffed accused-appellant and brought him to the PDEA IV-B Office. For unknown reasons, accused-appellant was incarcerated therein for a month before a case was filed against him. He presupposed that he was arrested and detained because he was associated with a certain Cris Pelino, who was also arrested earlier due to drug related charges.

⁷ Id. at 54.

⁸ Id. at 18.

⁹ Id. at 21.

The RTC Ruling

In a decision, dated November 19, 2013, the RTC found accused-appellant guilty beyond reasonable of the crime of violation of Section 5, Article II of R.A. No. 9165. Accordingly, the trial court sentenced accused-appellant to the penalty of life imprisonment and to pay a fine of ₱500,000.00.

The RTC held that the prosecution was able to prove the identity of the buyer, the seller, the object and the consideration in the illegal sale of the marijuana. It also held that the delivery of the said drug by accused-appellant and the payment thereof by IO1 Briguel during the buy-bust operation were duly established. The RTC further ruled that it was reasonable for the PDEA to conduct the inventory of the seized item at their office in Calapan, Mindoro to prevent a commotion at the place of the arrest.

Aggrieved, accused-appellant appealed before the CA arguing in his Brief for the Accused-Appellant¹⁰ that: the testimonies of the prosecution witnesses were inconsistent because IO1 Briguel testified that the buy-bust was conducted on March 30, 2009, while IO1 Echavaria testified that it was conducted on March 29, 2009; that the *sinumpaang salaysay* of IO1 Briguel, IO1 Echavaria and IO1 Jabano alleged that the buy-bust was conducted on March 30, 2009; that the integrity and evidentiary value of the confiscated item was not secured because it was merely wrapped in a banana leaf and it was not placed in an envelope or evidence bag; that there was an inconsistency as to who received the confiscated drug at the crime laboratory; and that the crime laboratory was not secured at the time of the examination because any personnel and policemen could enter the premises and even sleep there.

In their Brief for the Appellee,¹¹ the Office of the Solicitor General (*OSG*) countered that all the elements of the crime of illegal sale of dangerous drugs were established; that the confiscated drug was properly inventoried in the presence of accused-appellant, media representative, and an elected official; that the custody of the drug was duly accounted for; and that accused-appellant failed to refute the evidence against him.

The CA Ruling

In its decision, dated August 12, 2016, the CA dismissed the appeal. It held that the RTC correctly ruled that all the elements of the crime of illegal sale of dangerous drugs were duly proven. Likewise, the CA held that full faith and credence must be given to the testimonies of the PDEA agents pursuant to the presumption of regularity in the performance of their official

¹⁰ CA Rollo, pp. 46-61.

¹¹ Id. at 78-88.

duty. It observed that the buy-bust actually happened on March 29, 2009 based on the evidentiary documents of the prosecution.

Further, the CA highlighted that the prosecution was able to prove that there was substantial compliance with the chain of custody rule. It stated that the drug was marked by IO1 Briguel; that he also prepared the inventory and PCI Ojastro prepared the request for laboratory examination; that the marked item was delivered by IO1 Briguel to the crime laboratory; that it tested positive for marijuana; and that the same marked item was presented in court. The CA concluded that there was no compromise in the integrity and evidentiary value of the seized drug.

Hence, this appeal.

Issue

WHETHER THE GUILT OF ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution,¹² dated July 12, 2017, the Court required the parties to submit their respective supplemental briefs, if they so desire. In its Manifestation (In Lieu of Supplemental Brief),¹³ dated August 24, 2017, the OSG manifested it will no longer file a supplemental brief considering that its Brief for the Appellee had already amply discussed the assigned errors. In his Manifestation (In Lieu of a Supplemental Brief),¹⁴ dated September 15, 2017, accused-appellant stated that he will no longer file a supplemental brief since no new issue material to the case that were not elaborated upon in his appellant's brief were discovered.

The Court's Ruling

The appeal has merit.

There are inconsistent dates when the alleged transaction took place

The essential elements that have to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and payment therefor.

¹² *Rollo*, p. 18.

¹³ *Id.* at 21-23.

¹⁴ *Id.* at 32-34.

Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.¹⁵

In this case, the Court agrees with accused-appellant that the prosecution witnesses presented inconsistent dates regarding the occurrence of the alleged drug transaction. On March 3, 2010, IO1 Briguel, the poseur-buyer, testified in his direct examination as follows:

Q: Now, tell us Mr. Witness prior to the conduct of the operation what did your office receive in connection with the same, if any?

A: On **March 28, 2009** one of our confidential informants went to our office and talked to our OIC Marijane T. Ojastro and informed her that he knew of somebody selling illegal drugs.

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Q: After you have already formed the team, you as the poseur buyer, IO1 Jabano and IO1 Echavaria as arresting officers and Mary Grace Cortez the team leader, what did you agree on in connection with [sic] effecting the operation?

A: We set the date on within which we should be proceeding to Puerto Galera to proceed with our operation and we agreed that we should go to the said place on **March 30**.

Q: Before going to that place on **March 30** what preparations did you make if any?

A: Prior to that date and if I am not mistaken that was on **March 29** we had a briefing regarding the operation and we also prepared the pre-operational report ma'am.

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Q: So tell us in that early morning of **March 30**, how did you proceed to Puerto Galera?

A: We proceeded to Puerto Galera on board our service the Toyota Revo ma'am.¹⁶ (emphases supplied)

It is clear from the testimony of IO1 Briguel that they met their confidential informant in the PDEA office on March 28, 2009. Then, on March 29, 2009, the buy-bust team had a briefing regarding the operation and it was then that they prepared the pre-operation report. Finally, on March 30, 2009, the team proceeded to Puerto Galera for the buy-bust operation. The said testimony reflects the statements in the IO1 Briguel's *Sinumpaang Salaysay*,¹⁷ dated April 1, 2009. Likewise, the said dates are reflected in the

¹⁵ *People v. Carlit*, G.R. No. 227309, August 16, 2017.

¹⁶ TSN, dated March 3, 2010, pp. 5-9.

¹⁷ Records, pp. 6-7.

Magkasanib na Sinumpaang Salaysay,¹⁸ similarly dated April 1, 2009, of IO1 Jabano and IO1 Echavaria.

Later, on September 7, 2010, IO1 Briguel retracted his statement and, instead, insisted that the buy-bust operation occurred on March 29, 2009 based on his *Karagdagang Sinumpaang Salaysay*,¹⁹ to wit:

Q: My question now, Mr. Witness, why did you have to execute a *Karagdagang Sinumpaang Salaysay* when you have already executed a sworn statement with respect to this case?

A: When we filed the case we found out that what is written during the operation was March 30. The date of operation was March 29.

Q: Now, what was the date indicated in all other documents aside from your *Sinumpaang Salaysay*?

A: Not all, ma'm.

Q: So, you are telling us that the correct date of your operation was March 29, 2009 but what you have indicated in your *Sinumpaang Salaysay* is March 30 as the date of your operation. Now my question is, in what other documents did this March 30, 2009 appeared?

A: In the laboratory result wherein March 29 was indicated.

Q: So you are telling us that it is only in your original initial *Sinumpaang Salaysay* that March 30 was indicated?

A: Yes, ma'm, and the *Sinumpaang Salaysay* of the two (2) arresting officers.²⁰

The *Karagdagang Sinumpaang Salaysay* of IO1 Briguel, however, contains questionable circumstances. The said document was simply dated April 2009 without indicating the exact day of execution. It was also notarized on April 2, 2009. Assuming *arguendo* that the said *Karagdagang Sinumpaang Salaysay* was notarized on April 2, 2009, then it is dubious as to why IO1 Briguel did not mention the said document at all when he initially testified on March 3, 2010. It was only on September 7, 2010 that IO1 Briguel suddenly remembered that he executed such crucial affidavit. The only plausible explanation is that the incomplete affidavit did not exist as of March 3, 2010.

The Court is of the view that the *Karagdagang Sinumpaang Salaysay* was only executed as a mere afterthought to conceal the inconsistent dates of the buy-bust operation indicated in IO1 Briguel's testimony on March 3, 2010, his *Sinumpaang Salaysay* dated April 1, 2009, and the *Magkasanib na Sinumpaang Salaysay*, similarly dated April 1, 2009, of IO1 Jabano and IO1 Echavaria. Accordingly, there is doubt as to the actual date of the buy-bust operation; whether it was done on March 29 or March 30, 2009.

¹⁸ Id. at 12-13.

¹⁹ Id. at 64.

²⁰ TSN, dated September 7, 2010, pp. 5-6.

Glaringly, the OSG neither addressed nor explained the discrepancy of these dates. Further, the prosecution was remiss of its duty because it did not immediately act to rectify its mistake. It was only on September 7, 2010, when IO1 Briguel testified, that the prosecution attempted to explain the inconsistent dates, which existed as early as April 1, 2009. The prosecution, however, chose to rely on the *Karagdagang Sinumpaang Salaysay* of IO1 Briguel, which contained doubtful dates of execution and notarization.

The chain of custody rule

Aside from the inconsistent dates of the conduct of the buy-bust operation, the Court finds that the prosecution failed to sufficiently comply with the chain of custody rule. In prosecuting both illegal sale of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of said drugs. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of sale are present, the fact that the dangerous drug illegally sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.²¹

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.²²

As the means of ensuring the establishment of the chain of custody, Section 21 (1) of RA No. 9165 specifies that:

(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.

²¹ *People v. Del Mundo*, G.R. No. 208095, September 20, 2017.

²² Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 complements Section 21 (1) of RA No. 9165, to wit:

(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;

Based on the foregoing, Section 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physically inventory; and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.**²³

In addition, Section 21 of the IRR of R.A. No. 9165 provides 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.** It further states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.**²⁴

Interestingly, Section 21 of R.A. No. 9165 was amended recently by R.A. No. 10640, which became effective on July 15, 2014, and it essentially added the provisions contained in the IRR with a few modifications, to wit:

²³ *People v. Dahil*, 750 Phil. 212, 228 (2015).

²⁴ *People v. Dela Cruz*, 591 Phil. 259, 271 (2008).



(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Notably, in the amendment of R.A. No. 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in **(1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof. In the present case, as the alleged crime was committed on March 29, 2009, then the provisions of Section 21 of R.A. No. 9165 and its IRR shall apply.

*The apprehending team did not
comply with Section 21 of R.A.
No. 9165 and its IRR*

The records of the case show that the physical inventory of the confiscated drug and the photographs of the same were only done in the presence of the accused-appellant, Brgy. Captain Vergara and media representative Nebrejo. Clearly, a representative of the DOJ, as required by Section 21 of R.A. No. 9165, was not present during the inventory of the seized item.

More importantly, the apprehending team did not immediately conduct the physical inventory and the taking of the photographs at the time the suspected drug was confiscated or at the nearest police station. Instead, they travelled fifty four (54) kilometers from Puerto Galera, the place of the seizure, to Calapan City before they conducted the inventory of the seized drug.

The prosecution failed to provide a justifiable ground for the non-compliance of Section 21 of R.A. No. 9165

As a rule, strict compliance with the prescribed procedure under Section 21 of R.A. No. 9165 is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the proscribed procedures is not observed. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.²⁵

In this case, the prosecution failed to recognize its procedural lapses and give a justifiable ground for the non-compliance with Section 21 of R.A. No. 9165. Particularly, they were not able to explain the absence of a representative of the DOJ and the distant conduct of the inventory of the seized item. IO1 Echavaria attempted to explain that the said inventory was not done at the place of the arrest at Puerto Galera because they could not secure a representative of the media or the DOJ and, thus, went back to their office in Calapan City.²⁶ Nevertheless, upon their arrival in Calapan City, there was still no representative from the DOJ to witness the inventory of the confiscated item.

On the other hand, the witnesses of the prosecution attempted to explain the conduct of the inventory of the seized item fifty-four (54) kilometers away from the place of the arrest. IO1 Briguel testified as follows:

- Q: Did you bother to coordinate with the barangay officials of White Beach, Barangay Isidro, Puerto Galera?
- A: As I recall, no sir.
- Q: In other words Mr. Witness, you are telling this Honorable Court that you implemented this buy-bust operation 54

²⁵ *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, G.R. No. 206888, July 4, 2016, 775 SCRA 459.

²⁶ TSN, dated August 3, 2011, p. 11.

kilometers away from Calapan City and in the actual site, you did not bother to coordinate with the barangay official of the place where you conducted your buy-bust operation.

A: No, sir.

Q: What do you mean "no"?

A: We did not coordinate because that was the decision of our team leader.

Q: So, in other words, your team leader instructed you not to coordinate and instead do the inventory when you travelled back 54 kilometers away to Calapan, is it not correct?

A: Yes, sir.²⁷ (emphasis supplied)

In the same manner, IO1 Echavaria testified on the subject matter as follows:

Q: Now, since you were there already in the early morning of that date, can you please tell the Honorable Court whether or not you coordinate with any member of the media or barangay official for the purpose of that buy bust operation?

A: We did the coordination only during the inventory to meet the requirements.

Q: So in other words, during the eight (8) long hours, you did not bother to call any barangay official nor did you bother to secure the representative from the media while you were in Puerto Galera?

A: Our team leader deemed it no longer necessary to coordinate with the media or with the barangay officials. It was only during the inventory of the confiscated items that we did the coordination with such agencies.

Q: So can we be clarified as to where you conducted this inventory?

A: In our regional office, Sir.

Q: In Calapan City?

A: Yes Sir.

Q: Why did you not conduct that in Puerto Galera?

A: Because there were already many people in the exact place so we decided to do the inventory in our office.

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COURT:

Questions from the Court.

Q: During your cross-examination you stated that it was not practical to conduct the inventory at the scene and instead you

²⁷ TSN, dated February 2, 2011, pp. 13-14.

made the inventory at your office. What do you mean by it is not practical?

A: Your Honor because during that particular situation there were many people around so we could only do the marking[s] but we could not do the inventory at that place.

Q: What do you mean by it is not practical?

A: Because we could not secure the presence of the witnesses if we have done the inventory in the exact scene where the buy bust operation happened, Your Honor.

Q: Why can you not conduct the inventory at the scene and at the presence of the media and the DOJ representative?

A: Your Honor because we could not completely do the inventory at the scene if we would first call the representative of the media and the barangay official so we just did the marking on that place and did the inventory in the office.

Q: And how far is your office from the place of the incident?

A: I could not exactly determine. It took us about an hour and a half to reach our office.

Q: And in this particular case did you not prepare the inventory in Puerto Galera but instead prepared it in your office in Calapan, is it not?

A: Yes Your Honor.

Q: Would it not be impractical for the media, the DOJ representative and the barangay official to travel from Puerto Galera to Calapan City in your office and witness the preparation of the inventory?

A: Because in the preparation of the inventory we needed some witnesses.

Q: Who are these witnesses that you are referring to that you needed to contact for the inventory?

A: The barangay official, media representative and DOJ representative, your Honor.²⁸ (emphases supplied)

As can be gleaned from the witnesses' testimony, the excuses they proffered to justify the distant conduct of the inventory fifty-four (54) kilometers away from the place of seizure, are: (1) it was the team leader's discretion to conduct the inventory in Calapan City; (2) to avoid commotion at the place of seizure; and (3) they could not secure the witnesses required by law in the said place.

The Court finds that these excuses are unmeritorious. *First*, Section 21 of the IRR is clear that the physical inventory and photograph shall be conducted at the place of the seizure or at the nearest police station or at the nearest office of the apprehending team. In this case, the apprehending team did not even bother to look for the nearest police station at the place of seizure

²⁸ TSN, dated December 13, 2011, pp. 4-12.

to conduct the inventory. Instead, they leisurely took their time and travelled 54 kilometers away from the said place to secure an inventory of the seized item.

Second, another reason stated by the prosecution witness – that the inventory was done in Calapan to avoid a commotion at the place of the seizure – is unavailing. Evidently, there is no need to travel fifty four (54) kilometers away from Puerto Galera simply to avoid a commotion. As stated in IO1 Echavaria's testimony, the apprehending team had eight (8) hours to prepare before the operation was conducted and they could have easily identified the nearest police station in Puerto Galera for the inventory of the seized item. Certainly, the PDEA office in Calapan City is not the nearest police station in Puerto Galera.

Third, the apprehending officers allegedly travelled all the way back to Calapan City because only there could they secure the witnesses required by law. However, as discussed above, even when they travelled 54 kilometers to their office, they still failed to complete all the witnesses needed during the inventory. The RTC even observed that it was impractical for the media representative, DOJ representative and the elected official to travel from Puerto Galera all the way to Calapan City to simply witness the inventory. Indeed, the inventory could have been done at the nearest police station in Puerto Galera and the required witnesses could have conveniently attended thereat.

In *Dela Riva v. People*,²⁹ the Court acquitted the accused-appellant therein because although the buy-bust operation occurred in Subic, Zambales, the apprehending team conducted the marking, inventory and photographing of the seized item in Quezon City, which was several kilometers away. The prosecution could not give any justifiable reason for the unusually distant conduct of the physical inventory.

The prosecution failed to establish that the integrity and evidentiary value of the seized item was preserved

Aside from failing to provide a justifiable ground for the non-compliance of Section 21 of R.A. No. 9165, the prosecution also failed to establish that the integrity and evidentiary value of the seized item was preserved.

In the *first link* of the chain of custody, the apprehending officer acquires possession of the suspected drug from the offender at the time of the arrest. The apprehending officer is required to mark the seized items — to truly ensure that they are the same items that enter the chain and are eventually

²⁹ 769 Phil. 872 (2015).



the ones offered in evidence — and it should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.³⁰ In this case, the marking was not done at the place of the seizure; rather it was done at the vehicle. While there may be exceptions to the immediate marking of the seized item,³¹ even a less stringent application of the requirement would not suffice in sustaining a conviction in this case.

Aside from marking, the seized items should be placed in an envelope or an evidence bag unless the type and quantity of these items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.³² The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage.

Here, as shown by its photographs,³³ the seized marijuana was simply wrapped in a dried banana leaf; while the marking was merely written on a strip of paper that was attached to the seized item. Evidently, the confiscated marijuana was not placed in a secured container. IO1 Briguel testified as to how he handled the specimen, viz:

Q: Now, Mr. Witness, going back to the specimen which was earlier presented to you by the government prosecutor. How did you secure the dried marijuana leaves after you bought that from the body of the accused?

A: I took it from him and placed it in my pocket, sir.

Q: But insofar as the way you packed it, it appears that it is wrapped with banana leaves and what did you do after you packed it with banana leaves?

A: It was already packed when we bought it, sir.

Q: Did you not bother to put the same in a secured sealed container?

A: We did not bring any, sir, so I just placed it in our [sic] pocket.

Q: So, in other words when you received the unsecure specimen you did not bother to make it sure that the integrity of the specimen will be protected by putting it in a seal (sic) container or plastic sachet?

A: After marking the said specimen and when we were already in our way home we placed it in a plastic container, sir.

Q: You said that you placed it in a plastic to secure the specimen. But where is the sealed plastic, Mr. Witness?

³⁰ *People v. Martinez*, 652 Phil. 347, 377 (2010).

³¹ See *People v. Resurreccion*, 618 Phil. 520 (2009).

³² *Supra* note 30, at 377.

³³ Records, p. 46.

A: When we brought this specimen in the crime laboratory and then submitted the same to the office of the prosecutor they already removed it from the plastic, sir.

Q: In other words, you did not bother to put your initial on the plastic in which you placed this specimen?

A: None, sir.

Q: Why did you not do that?

A: I was not able to do it sir.³⁴ (emphasis supplied)

From the above testimony, it can be observed that when IO1 Briguel seized the marijuana wrapped in dried banana leaves, he simply placed the said item inside his pocket without securing it in a sealed container. Evidently, due to the poor packaging of the item, it is susceptible to tampering or alteration. Realizing his damaging testimony, IO1 Briguel suddenly changed his tune and stated that he allegedly placed the confiscated item in a plastic container. However, the purported plastic container was neither presented in evidence nor was it marked by IO1 Briguel. Glaringly, the photographs, Inventory³⁵ and the Chemistry Report No. D-010-09³⁶ demonstrate that the seized marijuana was merely wrapped in a dried banana leaf and was not secured in a plastic container.

Further, there are also irregularities in the *third link* of the chain of custody. In the said link, there must be a delivery by the investigating officer of the illegal drug to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.³⁷

In this case, while IO1 Briguel claims that he delivered the confiscated item to the PNP Crime Laboratory in Camp Efigenio C. Navarro, Calapan City, it was not clear who received the confiscated drug thereat. On direct examination, PCI Alviar testified as follows:

PROSECUTOR OLIVAR

Q: Madam Witness, in this letter request the one [sic] received the said specimen on behalf of the Regional Crime Laboratory is one PO1 Carreon. Would you confirm that PO1 Carreon is connected with your office?

A: Yes, ma'm.

xxx

Q: May we know if there is also SPO1 Watson in that crime lab?

A: Yes, ma'm.

³⁴ TSN, dated February 2, 2011, pp. 14-16.

³⁵ Id. at 54.

³⁶ Id. at 21.

³⁷ Supra note 23 at 237.

Q: What is his position in that crime laboratory?

A: He is now assigned at Mamburao, ma'm.

Q: But when he was with the Crime Laboratory what was his position?

A: Macro itching technician, ma'm.

Q: And also authorized in receiving specimen being submitted?

A: Yes, ma'm.

Q: And how about PSI Niduaza, Jr.? Is he also connected with your office?

A: Yes, ma'm. He is our forensic chemical officer.

Q: From whom did you received that specimen for examination?

A: From PSI Ernesto Niduaza, ma'm.

Q: Who received the same from PO1 Carreon?

A: It was received by PSI Ernesto Niduaza, ma'm.³⁸

On cross-examination, however, PCI Alviar presented a different chain of custody.

Q: When it was delivered to the crime laboratory what time was that when it was delivered to the crime laboratory.

A: Our office received the letter request based on the stamp marked appearing on the lower portion 2300H of March 29, 2009, ma'm.

Q: That is eleven o'clock in the evening?

A: Yes, ma'm.

Q: And are you the chemist on duty during that time?

A: Yes, ma'm. It was received by PSI Ernesto Niduaza.

Q: It was received by PSI Niduaza because during the time when it was received you were not the one on duty, is it not?

A: I cannot remember. I do not know if we have SOCO response during that time, sir.

Q: But is it not that the chemist on duty at the PNP Crime Laboratory in Suqui is either you or Engr. Niduaza being the two chemist available thereat?

A: Yes, sir.

Q: So, if Engr. Niduaza is present logically it (sic) meaning to say that you were not around during that time because Engr. Niduaza is on duty?

A: No, sir.

Q: But you cannot remember having been around that time?

A: Yes, sir.³⁹

³⁸ TSN, dated November 9, 2010, pp. 7-9.

³⁹ Id. at 14-15.

From the testimony, it can be gathered that PCI Alviar initially testified that the specimen was received by PO1 Carreon; that PO1 Carreon, SPO1 Watson and PSI Niduaza were authorized to handle the specimen; that PCI Alviar acquired the item from PSI Niduaza. Then on cross-examination, she then stated that it was PSI Niduaza that actually received the same; that the latter was present in the crime laboratory but was not on duty; and that she was on duty but cannot remember whether she was present at the crime laboratory. Accordingly, there is doubt as to who actually received the seized item from IO1 Briguel. Within the crime laboratory, the said specimen was handed from one person to another. It was even received by an officer who was not on duty at that time. The changing of hands of the specimen is precarious considering that it was not placed in a secured container.

Likewise, as properly pointed out by accused-appellant, the arrangement of the PNP Crime Laboratory therein is problematic based on the testimony of PCI Alviar, to wit:

Q: Is it not that the PNP Crime Laboratory is composed of three separate rooms, the PNP Crime Laboratory in Suqui?

A: We do not have permanent room, sir.

xxx

Q: The laboratory itself, the sink where you conduct your examination was located at the middle because the first portion of your office is the receiving area where there are many tables side by side, the second part is this portion where there is a one way mirror?

A: Yes, sir.

Q: And there is a door to enter that?

A: Yes, sir.

Q: And the third part is the storage room or evidence room?

A: Yes, sir.

Q: It is not that inside that second part, the sink, where you conduct your examination, there is a double deck bed?

A: Yes, sir.

Q: And it is where some of your personnel and even some policemen would sleep there, day in and day out whenever there is operation?

A: Yes, sir.⁴⁰

PCI Alviar admitted that the room where the drugs are inspected had a double deck bed where the personnel and the policemen would sleep when there is a police operation. These persons can enter the forensic room and there is a possibility they could contaminate the evidence. Surely, the reliability of the seized drugs cannot be preserved when there are various persons in the forensic room who are not even connected with the crime

⁴⁰ TSN, dated November 9, 2010, pp. 15-17.

laboratory. The testimony of PCI Alviar falls short of the requirement that the integrity and evidentiary value of the seized drug must be preserved.

Conclusion

In fine, the Court finds that there are several errors in the prosecution of the case. There were inconsistent dates on the conduct of the alleged buy-bust operation because of the conflicting statements and affidavits of the prosecution witnesses. Likewise, the requirement under Section 21 of R.A. No. 9165 was not complied with because a representative of the DOJ was not present at the time of the inventory of the seized item. Further, the inventory was done fifty-four (54) kilometres away from the place of seizure. No justifiable reason was provided for the non-compliance with Section 21.

The apprehending officers also failed to properly safe-keep the seized item because they did not place it in a secured container. Finally, the forensic chemist did not give a consistent statement as to who received the seized item and that the crime laboratory's arrangement made it possible for other personnel to contaminate the evidence. Accordingly, the prosecution failed to prove that the integrity and evidentiary value of the confiscated item were preserved.

Given the substantive flaws and procedural lapses, serious uncertainty hangs over the identity of the seized marijuana that the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of accused-appellant.⁴¹

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 12, 2016, of the Court of Appeals in CA-G.R. CR-HC No. 06607 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellant Manuel dela Rosa who is accordingly **ACQUITTED** of the crime charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

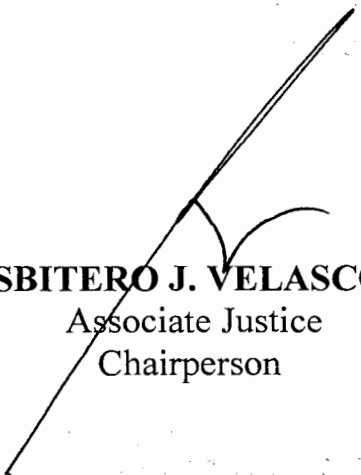
The Director of the Bureau of Corrections is **ORDERED** to implement this decision and to inform this Court of the date of the actual release from confinement of the accused-appellant within five (5) days from receipt hereof.

SO ORDERED.


ALEXANDER G. GASMUNDO
Associate Justice

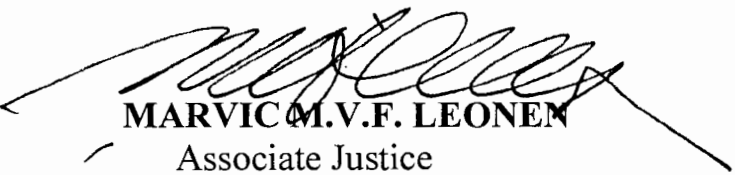
⁴¹ Supra note 23 at 239.

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(On official leave)
LUCAS P. BERSAMIN
Associate Justice




MARVIC M.V.F. LEONEN
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

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



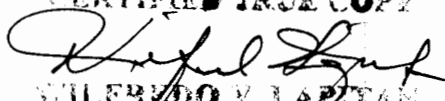
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

SILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JAN 17 2018

