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Republic of the Philippines  
Supreme Court  
Baguio City

Misael Domingo C. Battung III  
Deputy Division Clerk of Court  
Third Division

MAY 22 2019

**THIRD DIVISION**

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

**G.R. No. 229352**

**Present:**

- versus -

PERALTA, J., Chairperson,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
CARANDANG,\* JJ.

**LEMUEL GONZALES y**  
**BANARES,**  
Accused-Appellant.

**Promulgated:**

April 10, 2019

x-----Misael Domingo C. Battung III-----x

**DECISION**

**PERALTA, J.:**

This is an appeal from the Decision<sup>1</sup> dated August 11, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06203, denying appellant Lemuel Banares Gonzales' appeal and affirming the Decision<sup>2</sup> dated March 11, 2013 of the Regional Trial Court (RTC), Branch 82, Quezon City, in Criminal Cases No. Q-07-148425 and No. Q-07-148426, convicting appellant of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts follow.

\* Designated as additional member per Special Order No. 2624 dated November 28, 2018.  
<sup>1</sup> Rollo, pp. 2-20; penned by Associate Justice Victoria Isabel A. Paredes, and concurred in by Associate Justices Magdangal M. De Leon and Elihu A. Ybañez.  
<sup>2</sup> CA rollo, pp. 54-63; penned by Presiding Judge Severino B. De Castro, Jr.

At around 6:00 p.m., on August 8, 2007, a male person appeared at Police Station 11, Quezon City Police District, informing the officers of an alleged illegal sale of dangerous drugs by one alias "Memel" at Jollibee, Araneta Avenue corner Quezon Avenue, Quezon City. As such, P/Insp. Alberto Gatus (*P/Insp. Gatus*) formed a team composed of PO1 Ronaldo Flores (*PO1 Flores*), SPO4 Mario Abong (*SPO4 Abong*), PO1 Erlin Bautista (*PO1 Bautista*), PO3 Jonathan Carranza (*PO3 Carranza*), and a certain PO1 Ignacio. P/Insp. Gatus instructed PO1 Bautista to prepare the request for coordination with the Philippine Drug Enforcement Agency and also instructed PO1 Flores to act as the poseur-buyer.<sup>3</sup>

Later, on the same day, at around 8:00 p.m., the team proceeded to the designated place. After PO1 Flores and the informant alighted from the vehicle, the latter pointed towards the appellant who was standing outside Jollibee, Araneta Avenue. The two approached appellant. The informant and appellant talked; and then, the latter approached PO1 Flores and asked the latter how much would he get. PO1 Flores replied, "*dalawang piso*" which meant ₱200.00 worth of *shabu*. As PO1 Flores handed appellant the marked ₱200.00 bill, the latter, in turn, opened the compartment of his motorcycle and gave PO1 Flores a sachet containing white crystalline substance. PO1 Flores then lit a cigarette, a signal to the buy-bust team that the sale had been consummated. Immediately thereafter, the rest of the team approached appellant. SPO4 Abong held appellant and told him to empty his pockets. SPO4 Abong was able to recover the marked money; he arrested the appellant and apprised him of his constitutional rights. PO1 Flores then searched appellant's motorcycle and found another sachet containing what appeared to be *shabu*, and then properly marked the sachets that were confiscated.<sup>4</sup>

Afterwards, the buy-bust team brought appellant to Police Station 11 where an inventory was made, and the requests for drug test and laboratory examination were prepared. PO1 Flores turned over the seized sachets to the investigator, PO1 Bautista, who prepared the requests. PO1 Flores brought the seized sachets and the requests to the Crime Laboratory. Police Inspector Beaune Villaraza (*PI Villaraza*) received the seized items and conducted a qualitative examination of the contents of the sachets and found them positive for methamphetamine hydrochloride.<sup>5</sup>

Thus, two Informations were filed against appellant for violation of Sections 5 and 11 of R.A. No. 9165. The said Informations read as follows:

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<sup>3</sup> *Rollo*, p. 6.  
<sup>4</sup> *Id.* at 6-7.  
<sup>5</sup> *Id.* at 7.



CRIMINAL CASE NO. Q-07-148425

That on or about the 8<sup>th</sup> day of August, 2007 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver[,] transport or distribute any dangerous drug, did then and there, wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero two gram of methylamphetamine hydrochloride[,] a dangerous drug.

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

CRIMINAL CASE NO. Q-07-148426

That on or about [the] 8<sup>th</sup> day of August, 2007 in Quezon City, accused without authority of the law did then and there willfully, unlawfully, and knowingly possess a dangerous drug, to wit: zero point zero two (0.02) gram of methylamphetamine hydrochloride.

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

During his arraignments for the two Informations, September 3, 2007<sup>8</sup> for Criminal Case No. Q-07-148425 and January 31, 2008<sup>9</sup> for Criminal Case No. Q-07-148426, appellant pleaded “not guilty” on both instances.<sup>10</sup> The trial on the merits ensued, conducting a pre-trial conference.

The prosecution presented the testimonies of SPO4 Abong and PO1 Flores, as well as the stipulated testimonies of PI Villaraza and PO1 Bautista.

Appellant, on the other hand, presented his own testimony and that of his father, Silvestre Gonzales. According to appellant, on August 8, 2007, at around 5:00 p.m., he was eating with his father at the second floor of Jollibee Welcome Rotonda, Quezon City, when it started to rain. Thus, appellant went down to get his helmet from his motorcycle. Suddenly, two persons grabbed him and told him that somebody informed them that he was selling *shabu*. He was then brought to Police Station 11, Galas, Quezon City, where his cellphone, wallet containing ₱4,000.00, gold necklace, and key to his motorcycle were taken. Appellant claimed that the two men who grabbed him were SPO4 Abong and PO1 Flores. SPO4 Abong told him to cooperate and to leave his motorcycle with them in order for him to be released. Appellant, however, told the police officers that the motorcycle is owned by his father and that he has not committed any violation of any law. The police

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<sup>6</sup> Records, p. 1.

<sup>7</sup> *Id.* at 74.

<sup>8</sup> *Id.* at 24.

<sup>9</sup> *Id.* at 100.

<sup>10</sup> *Id.* at 24 and 100.

officers then told appellant to give them ₱25,000.00 for the settlement of the case. Appellant insisted that he gave the amount of ₱25,000.00 to PO1 Flores. Thereafter, the officers brought appellant to the Office of the Prosecutor located at the Quezon City Hall of Justice. SPO4 Abong and PO1 Flores conferred with the prosecutor, while appellant remained outside the same office. Appellant's father corroborated the former's testimony.<sup>11</sup>

On March 11, 2013, the RTC promulgated its Decision<sup>12</sup> finding appellant guilty beyond reasonable doubt of the charges filed against him, thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

a) Re: Criminal [C]ase No. Q-07-148425 – The Court finds accused LEMUEL GONZALES Y BANARES “guilty” beyond reasonable doubt of a violation of Section 5, Article II of R.A. No. 9165[.]

Accordingly, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Five Hundred Thousand (P500,000.00) Pesos.

b) Re: Criminal Case No. Q-07-148426 – The Court finds accused LEMUEL GONZALES Y BANARES guilty beyond reasonable doubt of a violation of Section 11, Article II of the same Act.

Accordingly, he is hereby similarly sentenced to suffer the indeterminate penalty of imprisonment of Twelve (12) Years and One (1) Day as Minimum to Fourteen (14) Years as Maximum and to pay a fine in the amount of Three Hundred Thousand (Php300,000.00) Pesos.

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drugs subject hereof for proper disposition and final disposal.

SO ORDERED.<sup>13</sup>

According to the RTC, the buy-bust operation conducted by the police officers is valid. It also ruled that all the elements for violation of Sections 5 and 11, Article II of R.A. No. 9165 were proven beyond reasonable doubt. Furthermore, the same court held that appellant's bare denial is intrinsically weak.

Appellant elevated the case to the CA, and the appellate court, on August 11, 2015, denied appellant's appeal, thus:

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<sup>11</sup> *Rollo*, pp. 7-8.

<sup>12</sup> *CA rollo*, pp. 54-63.

<sup>13</sup> *Id.* at 62-63.

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated March 11, 2013, of the Regional Trial Court, Branch 82, Quezon City, in Criminal Cases No. Q-07-148425 and Q-07-148426, is AFFIRMED.

SO ORDERED.<sup>14</sup> (Citation omitted.)

Hence, the present appeal after the CA denied appellant's motion for reconsideration.

In his Brief, appellant enumerated the following issues:

I

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY.

x x x x

II

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

x x x x

III

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

x x x x

IV

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.<sup>15</sup>

According to appellant, the elements of illegal sale and illegal possession of dangerous drugs were not sufficiently proven beyond reasonable doubt. Appellant argues that there was no buy-bust operation; thus, the sachets of *shabu* that were allegedly recovered in the trunk of his motorcycle may not be admitted in evidence as "fruit of the poisonous

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<sup>14</sup> Rollo, p. 19.

<sup>15</sup> CA rollo, pp. 39-43.

tree.”<sup>16</sup> Lastly, appellant claims that Section 21 (1) of R.A. No. 9165 was not complied with and that the chain of custody was not proved to be unbroken.

The appeal is meritorious.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) [T]he identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>17</sup> (Citation omitted.)

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that the procured object “is properly presented as evidence in court and is shown to be the same drugs seized from the accused.”<sup>18</sup>

Also, under Section 11, Article II of R.A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted:

[1] [T]he accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>19</sup> (Citation omitted.)

In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.<sup>20</sup> In *People v. Gatlabayan*,<sup>21</sup> the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.<sup>22</sup> Thus, the chain of custody carries out this purpose “as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”<sup>23</sup>

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<sup>16</sup> *Id.* at 42.

<sup>17</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 669 Phil. 240, 252 (2011).

<sup>22</sup> *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

<sup>23</sup> See *People v. Ismael*, *supra* note 17, at 29.

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

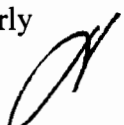
(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, 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[.]

Supplementing the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

(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[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the *IRR*, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance 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.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."<sup>24</sup> Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended."<sup>25</sup> In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."<sup>26</sup>

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."<sup>27</sup> In his Co-sponsorship Speech, he noted:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

x x x x

Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

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<sup>24</sup> Journal, Senate 16<sup>th</sup> Congress 1<sup>st</sup> Session 348 (June 4, 2014).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 349.



It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.<sup>28</sup>

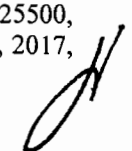
The foregoing legislative intent had been taken cognizance of in a number of cases. In *People v. Jovencito Miranda y Tigas*:<sup>29</sup>

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>30</sup> (Citations omitted.)

<sup>28</sup> *Id.* at 349-350.

<sup>29</sup> G.R. No. 229671, January 31, 2018.

<sup>30</sup> See also *People v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018; *People v. Philip Mamangon y Espiritu*, G.R. No. 229102, January 29, 2018; *People v. Alvin Jugo y Villanueva*, G.R. No. 231792, January 29, 2018; *People v. Niño Calibod y Henobeso*, G.R. No. 230230, November 20, 2017; *People v. Manuel Lim Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017, 839 SCRA 336, 347-349; and *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 624-626.



Under the original provision of Section 21 of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media **and** (3) from 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. It is assumed that the presence of these persons will guarantee “against planting of evidence and frame up,” *i.e.*, they are “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”<sup>31</sup> Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof.

A perusal of the records of this case shows that during the inventory, there was no indication that it was witnessed by a representative from the media and the National Prosecution Service, as well as that of any barangay official. Although PO1 Flores, during his testimony, claimed that a barangay official was present during the inventory, he did not offer any explanation as to why the said barangay official did not sign the inventory receipt nor was there any explanation as to the absence of a media representative and a representative from the National Prosecution Service, thus:

PROS. MINGOA:

Are you sure at the place where the accused was arrested?

A. Yes, sir.

Q. Was there any Barangay officials when you placed your markings?

A. None, sir. That was in the station.

COURT:

Wait, which one in the area?

A. The markings at the area.

COURT:

What was at the station?

A. The Barangay officials, your Honor.

ATTY. BARTOLOME:

You mean to say, Mr. Witness, the Inventory Receipt was prepared at the police station?

A. Yes, sir.

Q. And you were not the one who prepared this?

A. Yes, sir.

<sup>31</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 246-247.

COURT:

Who prepared the Inventory Receipt?

A. The investigator, PO1 Bautista, your Honor.

ATTY. BARTOLOME:

You were present when you prepared this?

A. Yes, sir.

Q. Who was the Barangay official who according to you witnessed the preparation of the inventory?

A. He did not print his name but he is a Barangay official of Barangay San Isidro, Galas, Quezon City, sir.

Q. How about during the preparation of this document was there any representation from the media?

A. Media, none, sir. Only from the Barangay.

Q. How about representative from the DOJ?

A. None, sir.

Q. How about counsel for the accused?

A. None, sir.<sup>32</sup>

This Court, in *People v. Angelita Reyes, et al.*,<sup>33</sup> mentioned certain instances that could justify the absence of the required witnesses, thus:

It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125<sup>34</sup> of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

Also, in *People v. Vicente Sipin y De Castro*:<sup>35</sup>


<sup>32</sup> TSN, February 8, 2010, pp. 16-17.

<sup>33</sup> G.R. No. 219953, April 23, 2018.

<sup>34</sup> Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

<sup>35</sup> G.R. No. 224290, June 11, 2018.



The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, 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 confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. (Citation omitted)

Incidentally, in this case, no explanation, whatsoever, was provided as to the absence of the required witnesses to the inventory. Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.<sup>36</sup> It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.<sup>37</sup> Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.<sup>38</sup> A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.<sup>39</sup>

This Court, therefore, must acquit the appellant for the prosecution's failure to prove his guilt beyond reasonable doubt. As such, discussion of the other issues is no longer necessary.


**WHEREFORE**, premises considered, the Decision dated August 11, 2015, denying appellant Lemuel Banares Gonzales' appeal and affirming the Decision dated March 11, 2013 of the Regional Trial Court, Branch 82,

<sup>36</sup> See *People v. Macapundag*, 807 Phil. 234, 243 (2017).

<sup>37</sup> See *People v. Jovencito Miranda y Tigas*, *supra* note 29; *People v. Ronaldo Paz y Dionisio*, *supra* note 30; *People v. Philip Mamangon y Espiritu*, *supra* note 30; and *People v. Alvin Jugo y Villanueva*, *supra* note 30.

<sup>38</sup> *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 560.

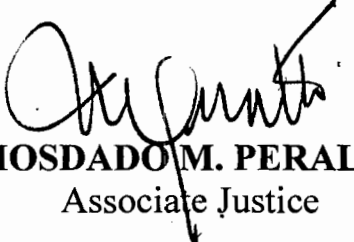
<sup>39</sup> See *People v. Bobby S. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Amroding Macud y Dimaampao*, G.R. No. 219175, December 14, 2017; *People v. Pablo Arposeple y Sanchez, et al.*, G.R. No. 205787, November 22, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017, 840 SCRA 311; *People v. Saragena, id.*; *People v. Saunar*, G.R. No. 207396, August 9, 2017, 836 SCRA 471; *People v. Sagana*, *supra* note 31; *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16; and *People v. Jaafar*, 803 Phil. 582 (2017).



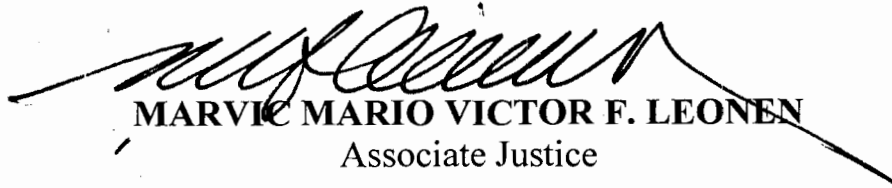
Quezon City, in Criminal Cases No. Q-07-148425 and No. Q-07-148426, convicting appellant Lemuel Banares Gonzales of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is **REVERSED** and **SET ASIDE**. Appellant Lemuel Banares Gonzales is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. Said Director is ordered to report to this Court, within five (5) working days from receipt of this Decision, the action he/she has taken.

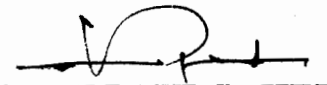
**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
 Associate Justice

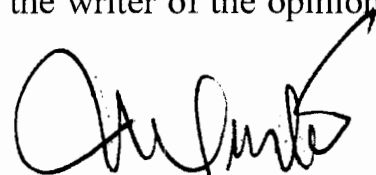
*Reyes*  
**ANDRES B. REYES, JR.**  
 Associate Justice

  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

  
**ROSALIND D. CARANDANG**  
 Associate Justice

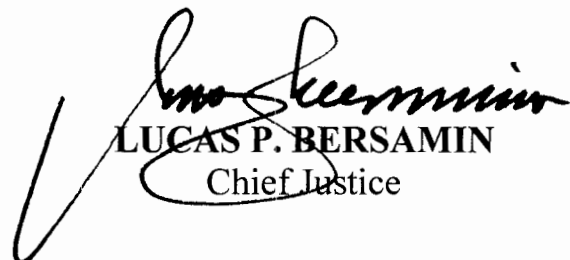
**ATTESTATION**

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.

  
**DIOSDADO M. PERALTA**  
 Associate Justice  
 Chairperson, Third Division

**CERTIFICATION**

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

  
**LUCAS P. BERSAMIN**  
 Chief Justice

COPIES TRUE COPY

*Mis RDC Batt*  
**MISRAEL DOMINGO C. BATTUNG III**  
 Deputy Division Clerk of Court  
 Third Division.

MAY 27 2019