



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

FIRST DIVISION

THE PEOPLE OF THE PHILIPPINES,

Plaintiff-Appellee,

G.R. No. 240230

Present:

- versus -

PERALTA, C.J., Chairperson,  
CAGUIOA, \* Working Chairperson,  
REYES, J. JR., \*\*  
LAZARO-JAVIER, and  
INTING, \*\*\* JJ.

ROGELIO DIVINAGRACIA, JR. y  
DORNILA, \*\*\*\* a.k.a. "Ensol" and  
ROSWORTH SY y BERSABAL, a.k.a.  
"Roro,"

Accused-Appellants.

Promulgated:

NOV 28 2019

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**DECISION**

REYES, J. JR., J.:

**The Case**

Before this Court is an appeal from the Decision<sup>1</sup> dated January 12, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08978 which affirmed the Amended Decision<sup>2</sup> dated September 6, 2016 of the Regional Trial Court (RTC) of Parañaque City, Branch 259, finding accused-appellants Rogelio Divinagracia, Jr. y Dornila, alias "Ensol" (Divinagracia) and Rosworth Sy y Bersabal, alias "Roro" (Sy) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (R.A. No.

\* On official leave.  
\*\* Acting Working Chairperson.  
\*\*\* Additional Member per Special Order No. 2726.  
\*\*\*\* "Dornilla" in some parts of the *rollo*.

<sup>1</sup> Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Rosmari D. Carandang (now a Member of the Court) and Zenaida T. Galapate-Laguilles, concurring; CA *rollo*, pp. 128-144.

<sup>2</sup> Id. at 63-73.

9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

### **The facts**

The CA summarized the facts of the case as follows:

Two (2) Informations dated 17 April 2013 were filed against [accused-appellants] which charged them with violation of Section 5, Article II, of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for the illegal sale of dangerous drugs; and against [Sy] for violation of Section 12, Article II, of Republic Act No. 9165, for the possession of a drug paraphernalia.

The Informations read:

#### **Criminal Case No. 11[-0464]**

That on or about the 25<sup>th</sup> day of April, 2011 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) self-sealing transparent plastic bag marked as 'EP' weighing 14.58 grams of Marijuana fruiting tops to police Poseur[-]Buyer PO3 Edwin Plopinio, the content of said plastic bag when tested was found positive to be Marijuana, a dangerous drug.

#### **Criminal Case No. 11-0465**

That on or about the 25<sup>th</sup> day of April, 2011 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously possess or have under his control one (1) improvised glass pipe marked as 'RB', an equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing an[y] dangerous drug into the body, in violation of the above-cited law.

[Accused-appellants] were arraigned on 5 May 2011, wherein they pleaded not guilty.

During the trial, the Prosecution presented the following witnesses: Police Officer Edwin Plopinio (**PO3 Plopinio**); Police Inspector Richard Allan Mangalip (**P/Insp. Mangalip**); Police Officer Rolly Burgos (**PO2 Burgos**); Kagawad Cho Villar (**Kagawad Villar**); and Police Officer Mildred Kayat (**PO3 Kayat**).

The Prosecution alleged the following facts:

On 25 April 2011, at around 6:50 p.m., PO3 Plopinio was stationed at the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG), Parañaque City, when a confidential informant arrived and informed them that a certain alias Ensol (later on identified as

[Divinagracia]), was selling marijuana in Barangay Don Bosco, Parañaque City.

In response to the information, Police Inspector Roque Tome, the Chief of SAID-SOTG, ordered the team of PO3 Plopinio,<sup>9</sup>PO3 Sarino, PO2 Julaton, PO2 Del Rosario, PO2 Ocampo and PO2 Burgos to conduct a buy-bust operation and to arrest [Divinagracia]. PO3 Plopinio was assigned as the poseur-buyer, PO2 Burgos as the immediate back-up, and the others as perimeter back-ups. PO3 Plopinio was provided with a five hundred peso bill with serial number KA281867, on which he placed his initials "EP."

At around 8:45 p.m., the policemen went to Brgy. Don Bosco in Parañaque City. Before heading to the target location, PO3 Plopinio and the informant went out of the vehicle and walked towards Doña Soledad Extension, while the rest of the policemen followed behind. When PO3 Plopinio and the informant saw two (2) male persons standing near a parked van on the road, the informant identified the man wearing a white shirt as [Divinagracia]. PO3 Plopinio claimed that when they approached [Divinagracia], the informant introduced PO3 Plopinio to [Divinagracia] as a user of marijuana and that PO3 Plopinio will buy marijuana worth five hundred pesos (Php 500.00). [Divinagracia] replied "*tamang-tama mayroon pang isang (1) plastic itong kasama ko (just in time, my friend still has one (1) plastic with him.*" Thereafter, PO3 Plopinio handed the marked money to [Divinagracia] who placed the marked money inside the latter's right pocket. Afterwards, [Divinagracia] asked his friend (who was later on identified as [Sy]) to hand over a zip-lock plastic sachet containing suspected marijuana fruity tops.

When PO3 Plopinio received the zip-lock plastic sachet from [Divinagracia], he performed the pre-arranged signal (to reverse the cap he was wearing) in order to signal the other policemen that the sale has been consummated. Immediately after executing the pre-arranged signal, PO3 Plopinio introduced himself as a policeman and arrested [Divinagracia], while PO2 Burgos rushed towards [Sy] and arrested the latter.

When PO3 Plopinio ordered the appellants to empty their pockets, [Divinagracia] surrendered the marked money from his right pocket. On the other hand, [Sy] surrendered an improvised glass pipe which contained suspected marijuana. Thereafter PO3 Plopinio conducted an inventory of the seized items. PO3 Plopinio marked the zip-lock plastic sachet with his initials "EP", while the improvised glass pipe was marked with PO2 Burgos' initials "RB". The Receipt/Inventory of Property Seized was signed by PO3 Plopinio and Kagawad Villar, the Kagawad of Brgy. Don Bosco, Parañaque City. PO2 Julaton took pictures of the proceedings and the seized items.

Afterwards, the police took [accused-appellants] to the police station and prepared the Request for Drug Test of [accused-appellants], as well as the Request for Laboratory Examination of the zip-lock plastic sachet containing suspected marijuana and the improvised glass pipe. PO3 Plopinio prepared the Chain of Custody Form which stated that he transferred the seized items to PO2 Julaton, the investigating officer, for documentation.

On 26 April 2011, both the [accused-appellants] and the seized items were taken to the PNP Crime Laboratory for laboratory examination. At 12:20 a.m., PO3 Plopinio delivered the Request for Laboratory Examination and transferred custody over the seized items to PO3 Kayat of the PNP Crime Laboratory. Immediately afterwards, PO3 Kayat gave the seized items to P/Insp. Mangalip for laboratory testing.

Thereafter, P/Insp. Mangalip issued Physical Science Report No. D-190-11S which stated that he received the seized items at "0020H 26 April 2011" and that the laboratory examination conducted on the seized items marked as "EP" and "RB" resulted positive for the presence of Marijuana, a dangerous drug.

PO2 Burgos corroborated the material allegations of PO3 Plopinio. PO2 Burgos testified that he is the immediate backup of PO3 Plopinio, and that he is the one who arrested [Sy].

Kagawad Villar testified that he was the Barangay Kagawad of Barangay Don Bosco, Parañaque City, at the time of the incident. He claimed that in the evening of 25 April 2011, he was in his house when he received a radio call from the radio operator of Brgy. Don Bosco that a buy bust operation was held at Doña Soledad extension and that the arresting team was asking him to witness the inventory. When he arrived at the scene of the crime, he saw Police Inspector Roque Tome, the Chief of SAID-SOTG, and his men with the [accused-appellants]. He further claimed that he saw a plastic sachet containing dried marijuana leaves, a small pipe, and a five hundred peso bill. He averred that he signed the Receipt/Inventory of Property Seized, which stated the items seized from the [accused-appellants].

When the Prosecution offered the testimonies of PO3 Kayat and P/Insp. Mangalip, the following facts were stipulated by the parties:

**PO3 Kayat:**

that he was the one who received the request for laboratory examination together with the specimen reflected in the said request; that his name is shown in the rubber stamp by the PNP Crime Lab as the one who received from Officer Plopinio the request for laboratory examination; that on the very same day that he received the request together with the specimen, he immediately turned over the same to Forensic Chemist Richard Allan Mangalip for laboratory examination as shown in Physical Science Report No. D-190-11S and Chemist Mangalip received the said request on the same time and date received by Officer Kayat x x x

**P/Insp/ Mangalip:**

that he received a request for Laboratory Examination on April 26, 2011 at 0020H; that he conducted an examination on one (1) self-sealing transparent plastic bag containing dried suspected marijuana fruiting tops and one (1) self-sealing transparent bag containing one (1) improvised glass pipe without markings containing partially burnt dried suspected

marijuana leaves; that he reduced his findings by way of Physical Science Report No. D-190-11S in connection with the laboratory examination he conducted resulting therein that the specimen gave positive result to the test for the presence of marijuana; that he would be able to identify the specimen; that he would be able to identify the result together with his signature and the signature of his superiors.

On the other hand, the Defense presented the [accused-appellants] as witnesses. The facts according to the Defense, are as follows:

[Sy] testified that on 25 April 2011, at about 9:30 p.m., he alighted from a tricycle at the Doña Soledad extension when he saw a certain Police Officer Ocampo (**PO2 Ocampo**). [Sy] claimed that PO[2] Ocampo was his former arresting officer in a different case. [Sy] claimed that PO2 Ocampo demanded [P]20,000.00 from him. [Sy] averred that when he replied that he does not have any money, he was suddenly handcuffed by PO2 Ocampo and ordered to go with the latter. Thereafter, a vehicle suddenly parked in front of them. [Sy] claimed that he did not know [Divinagracia] and that he only came to know about the latter when he met [Divinagracia] who was inside the vehicle.

During his cross-examination, [Sy] admitted that he did not report the alleged extortion to the authorities and that he did not file any case against PO2 Ocampo.

[Divinagracia] testified that on 25 April 2011, at around 9:00 p.m., he was walking home from work when four (4) persons approached him and introduced themselves as police officers. He claimed that he was asked by the police officers if he was "Nognog", and when he told the police officers that he was not Nognog, he was asked by the police officers to go with them for verification purposes. When [Divinagracia] refused to go with the police officers, he was immediately held by two (2) police officers and was boarded into a red vehicle. He claimed that the four (4) officers took him at Taiwan Street, Doña Soledad, where he saw another group of police officers and another person who was handcuffed. [Divinagracia] was taken outside of the vehicle and was handcuffed together with the other person who turned out to be [Sy]. Afterwards, the police took out a plastic sachet containing dried leaves and took pictures of the said plastic sachet with them. Thereafter, a [barangay] personnel arrived and was told by the police officers that they caught Nognog (referring to [Divinagracia]). However, the [barangay] personnel told the police officers that [Divinagracia] is not Nognog because the former knows who Nognog is. [Divinagracia] noticed that the [barangay] personnel and one of the police officers talked to each other and thereafter, he and [Sy] were taken to the Police Station where they were detained.

During his cross-examination, [Divinagracia] admitted that prior to the incident, he had no encounter or misunderstanding with the police officers who arrested him. Moreover, he admitted that he did not bother to know the names of the police officers who arrested him, nor did he bother to file a case against the said police officers.<sup>3</sup>

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<sup>3</sup> Id. at 129-135.

### *The Ruling of the RTC*

On August 20, 2016, the RTC rendered a Decision finding the accused-appellants guilty in Criminal Case No.11-0464 for the illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165, thereby sentencing them to suffer the penalty of imprisonment of 12 years and one day as minimum to 17 years as maximum, and to pay a fine of ₱400,000.00. As regards Criminal Case No. 11-0465, however, Sy was acquitted of the charge for violation of Section 12, Article II of the same law.<sup>4</sup>

On September 6, 2016, the RTC rendered an Amended Decision<sup>5</sup> amending the original penalty imposed upon the accused-appellants in its August 20, 2016 Decision to life imprisonment and a fine of one million pesos each.<sup>6</sup>

In convicting the accused-appellants for violation of Section 5, Article II of R.A. No. 9165, the RTC was convinced that the prosecution was able to prove with moral certainty the elements of the crime. It brushed aside the defense proffered by the accused-appellants of denial and frame-up for their failure to present any evidence of ill motive on the part of the prosecution witnesses to falsely impute the commission of the said crime upon them. The RTC explained that without proof of ill motive, the testimonies of the police officers are entitled to great respect and they are presumed to have performed their duties in a regular manner.

While the RTC recognized that the police officers failed to comply with the procedure under Section 21 of R.A. 9165 in that no representative of the Department of Justice (DOJ) and the media were present after seizure, it nevertheless held that the integrity and evidentiary value of the seized drugs had been duly preserved by the unbroken chain of custody of the *corpus delicti*.

Thus, the trial court disposed in this wise:

WHEREFORE, premises considered the Court finds accused **ROGELIO DIVINAGRACIA[,] JR[.] y DORONILA @ ENSOL and ROSWORTH SY y BERSABAL @ RORO** in Criminal Case No. 11-0464 for Violation of Sec. 5, Art. II of RA 9165 for sale of MARIJUANA with a total weight of 14.58 grams, **GUILTY** beyond reasonable doubt and are hereby sentenced to suffer the penalty of **life imprisonment and to pay a fine of one million pesos (Ph[P]1,000,000.00) each.**

<sup>4</sup> RTC records, pp. 561-571.

<sup>5</sup> Supra note 2.

<sup>6</sup> See: RTC records, pp. 573-574.

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In Criminal Case No. 11-0465 for Violation of Section 12, Article II of RA 9165, the Court finds accused **ROSWORTH SY y BERSABAL @ RORO NOT GUILTY** on the ground of reasonable doubt.

It appearing that accused **ROGELIO DIVINAGRACIA[,] JR.[.] y DORONILA @ ENSOL and ROSWORTH SY y BERSABAL @ RORO** are presently detained at Bureau of Jail Management and Penology [BJMP], Parañaque City and considering the judgment of conviction and the penalties imposed, the Branch Clerk of Court is hereby directed to prepare the *Mittimus* for the immediate transfer of the said accused from the BJMP, Parañaque City to the New Bilibid Prisons, Muntinlupa City pursuant to *Supreme Court OCA Circular No. 163-2013*.

The sachet of marijuana marked "EP" weighing 14.58 grams and improvised glass pipe tooter subject of these cases, are forfeited in favor of the government and the Branch Clerk of Court is directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Section 21 of RA 9165 and Supreme Court OCA Circular No. 51-2003.

SO ORDERED.<sup>7</sup>

Aggrieved, accused-appellants elevated their case to the CA via a Notice of Appeal.<sup>8</sup>

#### *The Ruling of the CA*

In its assailed Decision, the CA affirmed the findings of the RTC that the elements for the prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 had been shown to exist. It also agreed with the lower court that non-compliance by the police officers with the procedure laid down in Section 21, Article II of R.A. No. 9165 was not fatal to the prosecution's cause considering that it was able to sufficiently prove the unbroken chain of custody of the zip lock plastic sachet containing marijuana, from the moment it came into the possession of PO3 Plopinio, the poseur-buyer, until the same was brought to the crime laboratory for testing, and its subsequent presentation in court. The CA brushed aside accused-appellants' defenses of alibi, denial and frame-up for being unmeritorious in light of their failure to present strong and concrete evidence that would support their claim as well as any ill motive on the part of the police officers to concoct the false charge against them. Such defenses cannot prevail over the positive assertions of the police officers who were presumed to have performed their official duties in a regular manner. The dispositive portion of the CA Decision reads:

<sup>7</sup> Supra note 2, at 73.

<sup>8</sup> CA rollo, pp. 13-14.

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**WHEREFORE**, the instant appeal is hereby **DENIED**. The Amended Decision dated 6 September 2016 issued by the Regional Trial Court of Parañaque City, Branch 259, in Criminal Case Nos. 11-0464 and 11-0465, is hereby **AFFIRMED**.

**SO ORDERED.**<sup>9</sup>

Hence, this appeal. Accused-appellants center their defense on the failure of the police officers to comply with the mandatory procedure in Section 21, Article II of R.A. No. 9165 relative to the handling of the seized marijuana. In particular, they contend that the police officers conducted the inventory without the presence of a representative from the DOJ and the media. Even if Kagawad Villar, a *barangay* elected official, signed the inventory receipt, he did not witness the actual seizing and marking of the confiscated item. Accused-appellants likewise question the credibility of the witnesses presented by the prosecution on the ground that there were inconsistencies in their respective testimonies, such as: the number of members that comprised the buy-bust team; the person who prepared and signed the spot report; and the manner by which the arresting officers secured the presence of Kagawad Villar for the inventory. Accused-appellants also put in issue the failure of the police officers to indicate the amount and serial number of the marked money used in the Pre-Operation Form, Coordination Form and the Spot Report.

**The Issue**

The primordial issue for determination is whether accused-appellants are guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

**The Ruling of the Court**

In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs under Section 5, Article II of R.A. No. 9165, the prosecution must prove with moral certainty: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.<sup>10</sup> It is likewise indispensable for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. In cases like this, it is incumbent that the prosecution must be able to account<sup>8</sup> for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.<sup>11</sup>

<sup>9</sup> Supra note 1, at 143.

<sup>10</sup> *People v. Lumaya*, G.R. No. 231983, March 7, 2018.

<sup>11</sup> *People v. Año*, G.R. No. 230070, March 14, 2018.



The legality of entrapment operations involving illegal drugs begins and ends with Section 21, Article II of R.A. No. 9165.<sup>12</sup> Section 21, Article II of R.A. No. 9165, provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.<sup>13</sup> It provides:

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

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

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The Implementing Rules and Regulations of R.A. No. 9165, (IRR) on the other hand, filled in the void of the law by providing the details as to the place where the physical inventory and photographing of seized items should be accomplished and added a proviso on permissible deviation from the strict compliance with what the law requires on justifiable grounds. It states:

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

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

<sup>12</sup> *People v. Luna*, G.R. No. 219164, March 21, 2018.

<sup>13</sup> *Belmonte v. People*, 811 Phil. 844, 856 (2017).

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[.]

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Succinctly stated, the law commands that the seized drugs must be inventoried and photographed immediately after seizure and that the same must be conducted in the presence of the accused or his representative or counsel, and three other witnesses, namely: (a) a representative from the media; (b) a representative of the DOJ; and (c) an elected public official.<sup>14</sup> Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused.<sup>15</sup> Such stringent requirement was placed as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.<sup>16</sup> In *People v. Malabanan*,<sup>17</sup> the Court enunciated the two-fold purpose Section 21 seeks to achieve, *viz*:

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

In the present case, it is undisputed that the police officers failed to comply with the three-witness rule under Section 21 mentioned above. The prosecution never hid this fact nor made any attempt to deny that only Kagawad Villar witnessed the inventory of the confiscated items. However, the prosecution takes exception to the three-witness rule on the ground that it had been able to sufficiently prove the integrity of the drugs seized from the accused-appellants as well as the unbroken chain of custody of the same. In

<sup>14</sup> *People v. Malabanan*, G.R. No. 241950, April 10, 2019.

<sup>15</sup> *People v. Adobar*, G.R. No. 222559, June 6, 2018.

<sup>16</sup> *People v. Caivelo*, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 246.

<sup>17</sup> *Supra* note 14.

short, they posited that since the prosecution had been able to show that the drugs sold by the accused-appellants were the very same drugs seized by the police officers, marked, inventoried and subjected to laboratory examination which tested positive for marijuana and ultimately presented before the court as evidence against them, the proper chain of custody of the drugs was sufficiently established.

Such contention has no merit. In *People v. Mendoza*<sup>18</sup> this Court stressed that:

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21[a] *supra*, were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.

To be sure, non-compliance with the mandatory procedure under Section 21, Article II of R.A. No. 9165 and its IRR does not *per se* render the confiscated drugs inadmissible,<sup>19</sup> as the desire for a perfect and unbroken chain of custody rarely occurs,<sup>20</sup> but only triggers the operation of the saving clause enshrined in the IRR of R.A. No. 9165.<sup>21</sup> However, for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and the integrity and value of the seized evidence had nonetheless been preserved.<sup>22</sup> Stated otherwise, before a deviation from the mandatory procedural requirements under Section 21 may be allowed, the following requisites must be satisfied: (1) justifiable grounds must be shown to exist warranting a departure from the rule on strict compliance; and (2) the apprehending team must prove that the integrity and the evidentiary value of the seized items had been properly preserved.<sup>23</sup> However, in order for such saving mechanism to apply, the prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses.<sup>24</sup> Also, 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>25</sup>

<sup>18</sup> 736 Phil. 749, 764 (2014). See also *People v. Crispo*, G.R. No. 230065, March 14, 2018.

<sup>19</sup> *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

<sup>20</sup> *People v. Abdula*, G.R. No. 212192, November 21, 2018.

<sup>21</sup> *People v. Luna*, *supra* note 12.

<sup>22</sup> *People v. Ching*, 819 Phil. 565, 578 (2017), citing *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>23</sup> See *People v. Luna*, *supra* note 12.

<sup>24</sup> *People v. Alagarme*, 754 Phil. 449, 461 (2015).

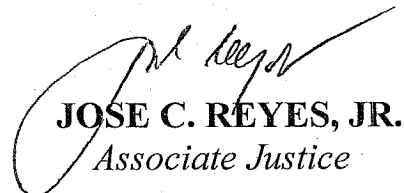
<sup>25</sup> *People v. Belmonte*, G.R. No. 224588, July 4, 2018.

In this case, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21, Article II of R.A. No. 9165 must be adduced.<sup>26</sup> Unfortunately, the prosecution did not do so. As a matter of fact, it did not offer any explanation why representative from the media and DOJ were not present at the place and time of the seizure, as well as in the inventory and photographing of the same. Considering that the first prong of the saving clause — presence of justifiable grounds for the non-compliance, was not complied with, any and all evidence tending to establish the chain of custody of the seized drugs become immaterial.<sup>27</sup> Even the identification of the seized evidence in court during the trial became ambiguous *and* unreliable, rendering the proof of the links in the chain of custody of the *corpus delicti* unworthy of belief.<sup>28</sup> Given that the prosecution failed to provide justifiable grounds for the glaring breaches of the mandatory requirements of Section 21, Article II of R.A. No. 9165, the accused-appellants' acquittal is perforce in order.

**WHEREFORE**, premises considered, the January 12, 2018 Decision of the Court of Appeals in CA-G.R. CR HC No. 08978 is **REVERSED** and **SET ASIDE**. Accused-appellants **Rogelio Divinagracia Jr. y Dornila, alias "Ensol"** and **Rosworth Sy y Bersabal, alias "Roro"** are **ACQUITTED**. The Director of the Bureau of Corrections is **ORDERED** to cause their immediate release, unless they are confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to report to this Court within five days from receipt of this Decision of the action he has taken. A copy of this Decision shall also be furnished the Director General of the Philippine National Police for his information.

**SO ORDERED.**

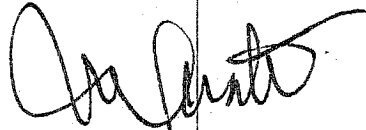
  
**JOSE C. REYES, JR.**  
*Associate Justice*

<sup>26</sup> *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

<sup>27</sup> *People v. Luna*, supra note 12.

<sup>28</sup> *People v. Alagarme*, supra note 24.

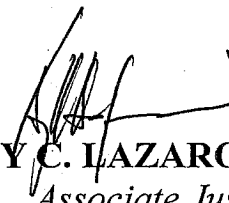
**WE CONCUR:**



**DIOSDADO M. PERALTA**  
*Chief Justice*  
*Chairperson*

(On Official Leave)

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



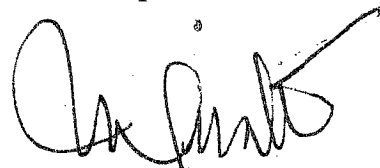
**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

**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.



**DIOSDADO M. PERALTA**  
*Chief Justice*

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