



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 17, 2022, which reads as follows:

“G.R. No. 222145 (*Albert Aquino Pimentel, Gabriel Novo Alsado, Wendell Aquino Hataas, and Rodel Cotamco Lapitag v. People of the Philippines*). — Assailed in this Petition for Review on *Certiorari*<sup>1</sup> are the February 23, 2015 Resolution<sup>2</sup> and the December 3, 2015 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 06583-MIN, which dismissed the Petition for *Certiorari*<sup>4</sup> filed by petitioners Albert Aquino Pimentel, Gabriel Novo Alsado, Wendell Aquino Hataas, and Rodel Cotamco Lapitag (petitioners). Petitioners assailed the October 8, 2014 Order<sup>5</sup> of the Regional Trial Court (RTC), Branch 27, Gingoog City, Misamis Oriental in Criminal Case No. 2009-4111, denying their Motion for Reconsideration<sup>6</sup> from the August 22, 2014 Judgment<sup>7</sup> of the RTC, finding them guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165<sup>8</sup> or the “Comprehensive Dangerous Drugs Act of 2002.”

**The Antecedents**

Petitioners were charged with Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165, as follows:

<sup>1</sup> *Rollo*, pp. 10-30.

<sup>2</sup> *Id.* at 44-45. Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Maria Filomena D. Singh (now a member of the Court).

<sup>3</sup> *Id.* at 86-87. Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Maria Filomena D. Singh (now a member of the Court).

<sup>4</sup> *Id.* at 46-71.

<sup>5</sup> *Id.* at 31-34.

<sup>6</sup> *Id.* at 35-43.

<sup>7</sup> *Id.* at 108-120. Penned by Presiding Judge Giovanni Alfred H. Navarro.

<sup>8</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACTS OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved on June 7, 2002.

- over thirteen pages...

That on January 13, 2009, at more or less 11:30 o'clock in the morning, in the National Highway of Pangasihan, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, confederating together, without lawful authority, did then and there willfully, unlawfully and feloniously possess and (*sic*) under their control dried Marijuana leaves, weighing more or less 855 grams, a dangerous drug.

Contrary to and in violation of R.A. No. 9165, the Comprehensive Dangerous Drugs Act of 2002.<sup>9</sup>

Petitioners pleaded not guilty to the charge on arraignment.<sup>10</sup>

### Version of the Prosecution

The prosecution's evidence consisted of the testimonies of Police Senior Inspector Charity P. Caseres (PSI Caseres), the Forensic Chemist who conducted a qualitative examination on the seized marijuana leaves, Police Inspector Ismael Virgil O. Gundaya (PI Gundaya), Senior Police Officer 4 Henry B. Legaspi (SPO4 Legaspi), and Senior Police Officer 4 Ronald A. Espejon (SPO4 Espejon), all of the Gingoog City Police Station, *Barangay* Captain Marvin B. Hiludo (*Barangay* Captain Hiludo) of *Barangay* Pangasihan, Gingoog City, and Rita D. Endriana (Rita), media representative from Monitor Today.<sup>11</sup>

Acting on an information received by SPO4 Legaspi from his informant that marijuana would be transported from Magsaysay, Misamis Oriental to Gingoog City on board a multicab bearing license plate no. LMJ-464, the Deputy Chief of Police, Police Inspector Fe Barsobia (PI Barsobia), ordered the set-up of a checkpoint at *Barangay* Talisay, Gingoog City.<sup>12</sup>

The team proceeded to *Barangay* Talisay in two groups. The first group led by SPO4 Legaspi took a multicab owned and driven by Police Officer 3 Nelson M. Benedicto (PO3 Benedicto), while the second group led by SPO4 Espejon rode a patrol jeep. When the two teams were on their way to the checkpoint area, they saw the multicab described by the informant allegedly transporting Marijuana. The team then made a u-turn and chased the subject multicab. During the pursuit, the driver of the multicab stuck his head out of the vehicle and shouted something to the three passengers who were seated at the back. Thereafter, one of the passengers threw out a yellow sack. At this juncture, the group of SPO4 Legaspi pulled over to verify the contents of the yellow sack. On the other hand, the group of SPO4 Espejon pursued the multicab and successfully overtook the same near the *barangay* hall of

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<sup>9</sup> *Rollo*, p. 108.

<sup>10</sup> *Id.* at 109.

<sup>11</sup> *Id.*

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

*Barangay* Pangasihán. One of the passengers attempted to escape but he was eventually apprehended.<sup>13</sup>

After the arrest, Senior Police Officer 4 Agapito R. Lituañas (SPO4 Lituañas) requested *Barangay* Captain Hiludo to witness the opening of the yellow sack. When *Barangay* Captain Hiludo arrived, SPO4 Legaspi opened the sack and found marijuana leaves wrapped in banana sheaths inside. SPO4 Legaspi then took custody of the sack and his group proceeded to the place where the four accused were held, together with *Barangay* Captain Hiludo and other *barangay tanods*, and effected their arrest. The team returned to the police station where SPO4 Legaspi marked the sack and conducted an inventory thereof in the presence of the four accused and members of the media, namely Rita, Mario Endrina, and Conrad Soria. PO3 Benedicto took photographs of the recovered marijuana leaves.<sup>14</sup>

After the inventory, SPO4 Legaspi kept the sack of marijuana leaves inside his locker. At around 7:00 a.m. of the next day, SPO4 Legaspi turned over the sack to SPO4 Espejon who in turn brought the same, together with PI Gundaya and Senior Police Officer 1 Arnold M. Sala (SPO1 Sala), to the Regional Crime Laboratory Office No. 10 in Cagayan de Oro City. PI Gundaya handed the sack to PSI Caseres. The qualitative examination conducted by PSI Caseres yielded positive result for marijuana with a total weight of 811.56 grams, as per Chemistry Report No. D-006-2009.<sup>15</sup>

### **Version of the Defense**

Petitioners denied the charge against them and alleged that on January 13, 2009 at about 11:30 a.m., they were on their way to Gingoog City to buy *nipa*. After passing a bridge in *Barangay* Pangasihán, a patrol vehicle suddenly blocked their vehicle. A group of police officers alighted and arrested petitioners imputing against them possession of dangerous drugs. Thereafter, petitioners were brought to the police station. At the station, petitioners denied having possession of a sack containing marijuana leaves. In short, petitioners claimed that the illegal drug was planted.<sup>16</sup>

### **Ruling of the Regional Trial Court**

In a Judgment dated August 22, 2014, the RTC found petitioners guilty as charged. It gave credence to the positive testimonies of the prosecution witnesses over petitioners' defense of denial, and found the prosecution to have ensured the integrity and evidentiary value of the seized marijuana from

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<sup>13</sup> Id. at 110.

<sup>14</sup> Id.

<sup>15</sup> Id. at 111.

<sup>16</sup> Id. at 112.

the moment of confiscation until its presentation in court. The decretal portion of the RTC ruling reads:

**WHEREFORE**, premises considered, the Court finds all the accused, Albert Aquino Pimentel, Jr., Gabriel Novo Alsado, Wendell Aquino Ataas, and Rodel Catamco Lapitag, **GUILTY** beyond reasonable doubt of the crime of Illegal possession of dangerous drugs, as penalized under Section 11, Article II, of Republic Act No. 9165, and hereby sentences them to suffer the penalty of life imprisonment and to pay a fine of five hundred thousand pesos (Php500,000.00) without eligibility for parole.

The subject marijuana leaves are hereby forfeited and confiscated in favor of the government. The Branch Clerk of Court, Atty. Alfredo Z. Gomez, is directed to turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposition and destruction.

SO ORDERED.<sup>17</sup>

Aggrieved, petitioners moved for a reconsideration<sup>18</sup> of the RTC Judgment, but the motion was denied in the Order<sup>19</sup> dated October 8, 2014, on the ground that the same has not been set for hearing as required by the Rules of Court. Considering that the *pro forma* Motion for Reconsideration did not toll the running of the period to appeal, the RTC declared that its Judgment has already attained finality.

### **Ruling of the Court of Appeals**

Undeterred, petitioners instituted a special civil action for *certiorari*<sup>20</sup> under Rule 65 of the Rules of Court before the CA. In a Resolution<sup>21</sup> dated February 23, 2015, the appellate court dismissed the petition based on the following procedural flaws, *viz.*:

1. Wrong mode of review;
2. Deficiency in the payment of docket fees in the amount of ₱30.00;
3. The Office of the Solicitor General (OSG) was not furnished with a copy of the petition; and
4. The date of receipt of the assailed RTC Judgment was not indicated.<sup>22</sup>

Petitioners' Motion for Reconsideration<sup>23</sup> was likewise denied by the CA in its Resolution<sup>24</sup> dated December 3, 2015.

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<sup>17</sup> Id. at 119.

<sup>18</sup> Id. at 35-43.

<sup>19</sup> Id. at 31-34.

<sup>20</sup> Id. at 46-71.

<sup>21</sup> Id. at 44-45.

<sup>22</sup> Id.

<sup>23</sup> Id. at 88-107.

<sup>24</sup> Id. at 86-87.

Hence, this petition.

Petitioners invoke liberality in the application of the rules for reasons of equity and substantial justice. They implore the Court to order the RTC to rule on the merits of their Motion for Reconsideration as their life and liberty are at stake.<sup>25</sup> They point out that their motion was filed within the prescribed period and that it was not dilatory in nature.<sup>26</sup> Further, the infirmity in their Motion for Reconsideration was due to the fault or negligence of their counsel, hence, not attributable to them.<sup>27</sup>

### Issue

The core issues in this case are: (1) whether petitioners' plea for liberal application of the rules is meritorious and; (2) whether the guilt of petitioners has been proven beyond reasonable doubt.

### Our Ruling

We grant the petition.

Under Section 4, Rule 15 of the Rules of Court, the applicable law during the pendency of the case before the trial court, every written motion must be set for hearing by the applicant and served together with the notice of hearing thereof, in such a manner as to ensure receipt by the other party at least three days before the date of hearing, unless the court, for good cause, sets the hearing on shorter notice. Under Sections 5 and 6 thereof, the notice of hearing shall be addressed to the parties concerned, and shall specify the time and date of the hearing of the motion; no motion shall be acted upon by the court without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party are not affected.

These requirements are mandatory. Except for motions which the court may act on without prejudice to the adverse party, all motions must set a hearing. This includes motions for reconsideration.<sup>28</sup>

The notice of hearing on the motion must be directed to the adverse party and must inform him or her of the time and date of the hearing. Failure to comply with these mandates renders the motion fatally defective, equivalent to a useless scrap of paper.<sup>29</sup>

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<sup>25</sup> Id. at 22.

<sup>26</sup> Id. at 24.

<sup>27</sup> Id. at 23.

<sup>28</sup> *Ti v. Diño*, 820 Phil. 330, 337 (2017). Citations omitted.

<sup>29</sup> Id.

In this case, the Notice of Hearing<sup>30</sup> in the Motion for Reconsideration filed by petitioners before the RTC prayed for the consideration and approval thereof, but without stating the time and date of the hearing of the motion. This is not the notice of hearing contemplated under Sections 4 and 5, Rule 15<sup>31</sup> of the Rules of Court. The rules are explicit and clear. The notice of hearing shall state the time and date of hearing and shall be served upon all the parties concerned at least three days in advance. The reason is obvious: unless the movant sets the time and place of hearing, the court would have no way to determine whether the other party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition.<sup>32</sup> On this score, the RTC considered petitioners' motion as a worthless piece of paper unworthy of judicial cognizance. As a consequence, its assailed August 22, 2014 Judgment has already attained finality which bars any review.

The CA likewise pointed to several procedural infirmities in petitioners' Petition for *Certiorari*, such as: (1) wrong mode of review; (2) deficiency in the docket fees paid; (3) failure to furnish the OSG with a copy of the petition; and (4) failure to indicate the date of receipt of the challenged RTC Decision.<sup>33</sup> On this ground alone, the petition was properly dismissed outright.

Nevertheless, considering the nature of the case and the issues involved herein, the Court finds that relaxation of the Rules is warranted. The Court has enumerated the factors that justify the relaxation of the rule on immutability of final judgments to serve the ends of justice, including: (a) matters of life, liberty, honor, or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.<sup>34</sup>

In the case at bar, the Court finds that compelling circumstances are extant to justify the relaxation of the rules. *First*, petitioners' lives and liberty

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<sup>30</sup> Rollo, p. 43.

<sup>31</sup> Section 4 and 5, Rule 15 of the Rules of Court provides:

Sec. 4. *Hearing of motion.* - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. *Notice of hearing.* - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

<sup>32</sup> *Resurreccion v. People*, 738 Phil. 704, 722 (2014), citing *Manila Surety and Fidelity Co., Inc. v. Batu Const. and Co.*, 121 Phil. 1221, 1224 (1965).

<sup>33</sup> Rollo, pp. 44-45.

<sup>34</sup> *Heirs of Dinglasan v. Ayala Corporation*, G.R. No. 204378, August 5, 2019.

are at stake. The trial court has sentenced them to suffer the penalty of life imprisonment without eligibility for parole and this conviction attained finality on the basis of a mere technicality, without their participatory fault or negligence. Under the circumstances, it is more prudent that petitioners be given the opportunity to pursue their motion and eventually appeal the RTC ruling to the CA if it turns out to be unfavorable to them. To do otherwise would be tantamount to grave injustice.

*Second*, there is lack of any showing that the review sought is merely frivolous and dilatory.

*Third*, it is evident that the case has been marked by gross negligence and incompetence of petitioners' counsel. At the outset, the Court notes that petitioners' counsel filed a flawed Motion for Reconsideration before the RTC. Thereafter, the CA denied due course petitioners' Petition for *Certiorari* as it was laden with procedural infirmities that warranted its outright dismissal. It cannot be gainsaid that these defects are plainly avoidable with the simple application of the relevant guidelines existing in our Rules of Court.

At this point, it is worth emphasizing that the rule that mistakes of counsel bind the client may not be strictly followed where observance of it would result in outright deprivation of the client's **liberty** or property, **or where the interests of justice so require**. In rendering justice, procedural infirmities take a backseat against substantive rights of litigants. Corollarily, if the strict application of the rules would tend to frustrate rather than promote justice, the Court is not without power to exercise its judicial discretion in relaxing the rules of procedure.<sup>35</sup> In *Aguilar v. Court of Appeals*,<sup>36</sup> the Court held:

Losing liberty by default of an insensitive lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer. The established jurisprudence holds:

x x x x

The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rule, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule desert its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.<sup>37</sup>

In this connection, the case of *Latogan v. People*<sup>38</sup> (*Latogan*), which had

<sup>35</sup> *Latogan v. People*, G.R. No. 238298, January 22, 2020.

<sup>36</sup> 320 Phil. 456 (1995).

<sup>37</sup> *Id.* at 461-462.

<sup>38</sup> *Supra.*

a factual milieu quite similar to the present controversy, is a suitable reference herein. In *Latogan*, the trial court convicted the accused of the crime of Murder and was sentenced to suffer the penalty of *reclusion perpetua*. On motion for reconsideration, the notice similarly failed to indicate the date and time of the hearing thereof. Consequently, the trial court denied the motion due to lack of notice of hearing as required by the rules. The accused filed a notice of appeal but it was also denied by the trial court. Aggrieved, the accused initiated a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. However, the appellate court dismissed the petition due to some procedural infirmities. Nevertheless, this Court reversed and set aside the assailed CA ruling to better serve the ends of justice. The Court found cogent reasons to justify liberal application of the rules taking into account that the life and liberty of the accused were at stake. The Court likewise ruled that the technical infirmities were not entirely due to the accused's own making, and that there was no showing that the review sought was merely frivolous and dilatory. In addition, both the motion for reconsideration before the RTC and subsequent petition for *certiorari* in the CA appeared to stand on meritorious grounds.

Similarly, in *Basco v. Court of Appeals*,<sup>39</sup> the trial court found the accused guilty of Illegal Possession of Firearm and sentenced him to suffer the penalty of *reclusion perpetua*. The trial court subsequently denied his Motion for Reconsideration as the notice of hearing thereof lacked the required date and time of the motion's hearing as explicitly required by the rules. On appeal, however, the Court gave due course to the petition holding that if a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.

Finally, records show that petitioners' Motion for Reconsideration before the RTC and their subsequent Petition for *Certiorari* with the CA appear to stand on meritorious grounds. According to petitioners, they were not present when SPO4 Legaspi opened the recovered sack of marijuana leaves.<sup>40</sup> In fact, the subject sack was not even shown to them by the police officers.<sup>41</sup> Admittedly, it was only *Barangay* Captain Hiludo who witnessed the opening of the subject sack as per the RTC ruling.<sup>42</sup> It is, therefore, baffling why the police officers were able to request *Barangay* Captain Hiludo to witness the opening of the sack and yet failed to produce the petitioners despite the fact that they were already in the custody of the police, near the place where the sack was allegedly thrown. This lapse was not explained by the prosecution.

Petitioners further averred that the apprehending officers did not conduct an inventory of the illegal drug, but merely logged the incident in the police

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<sup>39</sup> 383 Phil. 671, 687 (2000).

<sup>40</sup> *Rollo*, p. 36.

<sup>41</sup> *Id.* at 37.

<sup>42</sup> *Id.* at 116.



blotter, in clear disregard of the first link in the chain of custody rule.<sup>43</sup> On the other hand, the assailed RTC Judgment states that SPO4 Legaspi conducted an inventory of the sack containing marijuana leaves upon their arrival at the police station, only that, the result thereof was reflected in the police blotter instead of the usual Inventory Sheet.<sup>44</sup>

Unfortunately, the said police blotter was not attached to the petition making it impossible for the Court to find out whether it contains a detailed description of the seized drug, tantamount to the inventory contemplated by law, or the incident was merely logged therein, as in the regular police blotter, as claimed by petitioners.

Moreover, in their Motion for Reconsideration before the RTC, petitioners pointed out that they were not present in all the photographs presented by the prosecution, *e.g.*, during the opening of the sack in the place where it was recovered, and during the conduct of the alleged inventory.<sup>45</sup> The said photographs were, however, not included in the records of the case elevated to the Court. If it were true that no inventory was conducted, or that even if there was, but the petitioners were not present therein, a gap already occurred in the initial step of the chain of custody.

Worst, a review of the records shows that there was neither a representative from the Department of Justice (DOJ) nor an elected public official when the alleged physical inventory and photography of the seized item were done. This is evident from the assailed RTC Judgment.<sup>46</sup> Nonetheless, the trial court found that the failure of the police officers to strictly comply with Section 21, Article II of RA 9165 and Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, was not fatal considering that the integrity and evidentiary value of the subject marijuana leaves were preserved.

As a means of ensuring the establishment of the chain of custody, Section 21, Article II of RA 9165, the applicable law at the time of the subject incident, requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of the seized items 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.<sup>47</sup>

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<sup>43</sup> Id. at 40.

<sup>44</sup> Id. at 116.

<sup>45</sup> Id. at 37.

<sup>46</sup> Id. at 118.

<sup>47</sup> Section 21. x x x.

(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

While the failure of the apprehending team to strictly comply with the procedure laid down in Section 21, Article II of RA 9165 does not *ipso facto* render the seizure and custody over the marijuana as void and invalid, the prosecution must satisfactorily prove that (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>48</sup> The justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>49</sup>

In *People v. Lim*,<sup>50</sup> the Court considered the following as justifiable reasons for not securing the three witnesses during the inventory and photograph taking:

(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) the 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.<sup>51</sup>

In the case at bar, SPO4 Legaspi claimed that no elected public official witnessed the conduct of the inventory because *Barangay* Captain Hiludo did not follow the team at the police station despite SPO4 Legaspi's request.<sup>52</sup> He also explained that no DOJ representative was present because there was a typhoon, and that he believed that there was no work at that time.<sup>53</sup>

We find the foregoing explanations not plausible enough to justify the absence of the other insulating witnesses. It appears that there was no genuine and sufficient effort on the part of the apprehending police officers to secure the presence of the said witnesses. The fact that *Barangay* Captain Hiludo did not proceed to the police station, and the mere belief of SPO4 Legaspi that there was no work at the time, without substantiation and without employing earnest efforts to determine the availability of the required witnesses, are not

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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.

<sup>48</sup> See *Edangalino v. People*, G.R. No. 235110, January 8, 2020.

<sup>49</sup> Id.

<sup>50</sup> G.R. No. 231989, September 4, 2018, citing *People v. Vicente Sipin*, 833 Phil. 67, 93 (2018).

<sup>51</sup> Id.

<sup>52</sup> *Rollo*, p. 119.

<sup>53</sup> Id.

convincing and acceptable as justified grounds for noncompliance.

Settled is the rule that a sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1), Article II of RA 9165, or that there was a justifiable ground for failing to do so.<sup>54</sup>

In a catena of cases, the Court has exonerated the accused on the sole ground that the prosecution failed to comply with the three-witness rule under RA 9165. In *People v. Addin*,<sup>55</sup> the police officers only managed to secure the presence and signature of a representative from the media at the time of the physical inventory and the taking of photographs of the confiscated items. The Court held that the absence of a DOJ representative and an elected public official during the inventory resulted in a substantial gap in the chain of custody of the seized item from the accused, which placed its integrity and evidentiary value in question.

The same conclusion was reached by the Court in *People v. Cariño*,<sup>56</sup> where the Court found that the prosecution failed to comply with the chain of custody rule due to the absence of a media representative to witness the inventory, which warranted the acquittal of the accused.

In *People v. Baluyot*,<sup>57</sup> the Court similarly acquitted the accused in light of the arresting team's noncompliance with the three-witness rule. In that case, the prosecution likewise failed to satisfactorily explain the absence of a DOJ representative during the marking, inventory, and photography of the seized dangerous drug.

Given the foregoing disquisitions, We find it proper to dispense with the regular procedure of remanding the case to the trial court for resolution of the Motion for Reconsideration, since the failure of the law enforcement officers to observe the three-witness rule already seriously compromised the integrity of the seized marijuana, and ultimately casted reasonable doubt on petitioners' guilt. Hence, petitioners' acquittal is warranted.

**WHEREFORE**, the appeal is **GRANTED**. The assailed Resolutions dated February 23, 2015 and December 3, 2015 of the Court of Appeals in CA-G.R. SP No. 06583-MIN are **REVERSED** and **SET ASIDE**. Petitioners

<sup>54</sup> *Tañamor v. People*, G.R. No. 228132, March 11, 2020, citing *People v. Umipang*, 686 Phil. 1024, 1053 (2012).

<sup>55</sup> G.R. No. 223682, October 9, 2019.

<sup>56</sup> G.R. No. 234155, March 25, 2019.

<sup>57</sup> G.R. No. 243390, October 5, 2020.

Albert Aquino Pimentel, Gabriel Novo Alsado, Wendell Aquino Hataas, and Rodel Cotamco Lapitag are **ACQUITTED** of the crime charged against them for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered immediately **RELEASED** from detention, unless confined for any other lawful cause.

**FURNISH** the Director General, Bureau of Corrections, Muntinlupa City, a copy of this Resolution for immediate implementation. Furthermore, the Director General is **DIRECTED** to report to this Court the action taken hereon within five days from receipt of this Resolution.

Let an entry of judgment be issued immediately.

The petitioners' motion for an additional time of fifteen (15) days from April 15, 2022 within which to submit a memorandum and their motion to admit memorandum with attached memorandum, are both **GRANTED**; the petitioners' memorandum in compliance with the Resolution dated September 29, 2021, and the letter dated March 15, 2022 of Ms. Nelsie D. Loja, Chief, Archives Section, Court of Appeals-Mindanao, Cagayan de Oro City, in compliance with the Resolution dated September 29, 2021, forwarding the rollo of CA-GR. SP No. 06583-MIN with 120 pages, are both **NOTED**; and the respondent's memorandum as required in the Resolution dated September 29, 2021 is **DISPENSED WITH**.

**SO ORDERED."**

By authority of the Court:

  
**ATTY. LIBRADA C. BUENA**  
Division Clerk of Court

by:

**ATTY. MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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**SEP 06 2022**

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