



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 2, 2022** which reads as follows:*

**“G.R. No. 242890 (People of the Philippines, Plaintiff-Appellee vs. Ritchel P. Bacalla,\* Accused-Appellant).**

This Appeal<sup>1</sup> seeks to reverse and set aside the August 15, 2018 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 01698, affirming the October 28, 2016 Decision<sup>3</sup> of the Regional Trial Court of Panabo City, Branch 34 (RTC), in Criminal Case No. CrC 569-2013. The RTC found Ritchel P. Bacalla (*accused-appellant*) guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the “*Comprehensive Dangerous Drugs Act of 2002.*”

*Antecedents*

In an Information dated November 11, 2013, accused-appellant was charged with illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, the accusatory portion of which reads:

Criminal Case No. CrC 569-2013

That on or about November 10, 2013, in the Municipality of Carmen, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, accused, in conspiracy with Michael [Alfon]<sup>4</sup> alias “Sam”, who is at large and will be

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\* Also referred to as “Ritchell P. Bacalla” in some parts of the *rollo* and CA *rollo* (see: *rollo*, pp. 17-20, 31, 37 and 38; CA *rollo*, pp. 31, 33, 80 and 82).

<sup>1</sup> *Rollo*, p. 17.

<sup>2</sup> *Id.* at 3-16; penned by Associate Justice Edgardo T. Lloren with Associate Justices Ruben Reynaldo G. Roxas and Walter S. Ong, concurring.

<sup>3</sup> Records, pp. 192-208; penned by Presiding Judge Dax Gonzaga Xenos.

<sup>4</sup> Also referred to as “Michael Alpon” in some parts of the *rollo* and CA *rollo* (see: CA decision, *rollo*, pp. 4-7 and 9; Appellant’s Brief, CA *rollo*, pp. 40 and 50; Brief for the Plaintiff-Appellee, CA *rollo*, pp. 86 and 95).

investigated separately in a regular preliminary investigation, without being authorized by law, did then and there [willfully], unlawfully and knowingly deal, sell and distribute one (1) bundle of dried Marijuana Fruiting tops weighing 130 grams to PO3 Loel C. Sugano, who acted as poseur buyer.

CONTRARY TO LAW.”<sup>5</sup>

Due to the refusal of accused-appellant to enter a plea during his arraignment, the RTC directed that a plea of “not guilty” be entered for him.<sup>6</sup>

On December 22, 2014, the RTC issued an Order<sup>7</sup> admitting the Amended Information<sup>8</sup> dated October 15, 2014 charging both accused-appellant and Michael Alfon (*Alfon*) with violation of Sec. 5, Art. II of R.A. No. 9165. The accusatory portion of the said amended information states:

That on or about November 10, 2013, in the Municipality of Carmen, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with each other, without being authorized by law, did then and there [willfully], unlawfully and feloniously deal, sell and distribute one (1) bundle of dried **marijuana fruiting tops** weighing 130 grams to PO3 Loel C. Sugano, who acted as poseur[-]buyer.

CONTRARY TO LAW.<sup>9</sup>

After pre-trial was terminated, the trial on the merits ensued.

*Version of the Prosecution*

The prosecution presented as its witnesses Police Officer III Loel C. Sugano (*SPO3 Sugano*) and Police Officer III Emmanuel Petilla (*PO3 Petilla*). Their combined testimonies tend to establish the following:

On November 10, 2013, PO3 Sugano received a tip from a confidential informant (*informant*) that accused-appellant and Alfon were selling prohibited drugs at Mangalcal, Carmen, Davao del Norte. PO3 Sugano relayed the information to Police Senior Inspector Reny

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<sup>5</sup> Records, p. 1.

<sup>6</sup> Id. at 21; Order dated February 3, 2014.

<sup>7</sup> Id. at 112.

<sup>8</sup> Id. at 105.

<sup>9</sup> Id.

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Valdesco, who conducted a briefing for a possible buy-bust operation against accused-appellant. PO3 Sugano was designated as the poseur-buyer and was given two (2) ₱500.00 bills as buy-bust money. PO3 Petilla was assigned as the arresting officer.<sup>10</sup>

Thereafter, the buy-bust team proceeded to the target area. The informant contacted accused-appellant, who told them to proceed to a waiting shed. PO3 Sugano, PO3 Petilla, and the informant followed accused-appellant's instructions and went to the waiting shed where they met accused-appellant and Alfon. After being introduced by the informant to accused-appellant and Alfon, PO3 Sugano told them that he would buy ₱1,000.00 worth of marijuana fruiting tops. Accused-appellant instructed Alfon, who then took from the back of his waist a bundle wrapped with newspaper which he handed to PO3 Sugano. After checking and confirming that the wrapped bundle contained marijuana fruiting tops (*seized item*), PO3 Sugano gave the buy-bust money to accused-appellant. PO3 Sugano forthwith introduced himself as a police officer and arrested accused-appellant, while Alfon managed to escape after PO3 Petilla's attempt to arrest him failed.<sup>11</sup>

*Barangay Kagawad* Romeo Borja (*Kagawad Borja*) then arrived at the scene to witness PO3 Sugano and PO3 Petilla mark their initials on the bundle bought from accused-appellant and Alfon while photographs were being taken. Accused-appellant was thereafter brought to the police station, with PO3 Sugano retaining custody of the seized item.<sup>12</sup>

At the police station, PO3 Sugano conducted the inventory as witnessed by accused-appellant. After the inventory, PO3 Sugano personally delivered the seized item and requests for laboratory examination to the crime laboratory.<sup>13</sup> Police Chief Inspector Engr. Virginia Sison Gucor (*PCI Gucor*), a forensic chemist, conducted a qualitative examination on the seized item and confirmed in her Chemistry Report D-240-2013 that the contents of the seized bundle yielded positive for marijuana. Accused-appellant's urine test, on the other hand, gave positive result for methamphetamine hydrochloride.<sup>14</sup>

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<sup>10</sup> *Rollo*, p. 6.

<sup>11</sup> *Id.* at 6-7.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 12-13.

*Version of the Defense*

The defense presented accused-appellant as its witness. Accused-appellant testified that, in the evening of November 10, 2013, he was at a store with his friend, John Ray Cabrera (*Cabrera*), when a black van suddenly stopped in front of them from which two (2) armed men disembarked. The armed men pointed guns at accused-appellant and Cabrera, and frisked them. Finding nothing, they ordered accused-appellant and Cabrera to face the ground and handcuffed them. The armed men introduced themselves as police officers and asked accused-appellant and Cabrera if they had taken marijuana. When accused-appellant denied having marijuana, he was dragged to a dark area and was forced to board a patrol car. He was then brought to the house of *Kagawad* Borja who went with them to the place where accused-appellant was arrested. Upon their return, the police officers wrote something on a piece of paper and took pictures of him. Thereafter, they all went to the police station where pictures of him, this time with a bundle of marijuana and two (2) ₱500.00 bills, were taken by the police officers. Accused-appellant heard the police officers say that the bundle and the money were recovered from him and a certain "Alfon."<sup>15</sup>

*The RTC Ruling*

In its October 28, 2016 Decision, the RTC found accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs. The dispositive portion of the decision reads:

**WHEREFORE**, judgement is hereby rendered finding accused Ritchel P. Bacalla guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of *life imprisonment* together with the accessory penalties attached thereto and to pay [a] fine in the amount of Php 500,000.00.

In the service of his sentence, accused is entitled to full credit of his preventive imprisonment pursuant to the provisions of Art. 29 of the Revised Penal Code. Accused shall serve his sentence at Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.

The one (1) bundle of marijuana fruiting tops weighing 130 grams is ordered confiscated and forfeited in favor of the government through the PDEA to be disposed of and destroyed by

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<sup>15</sup> Id. at 7-8.

the latter in accordance with existing laws and regulations. In connection thereto, PDEA Regional Office XI, Davao City is directed to assume custody of the subject drug for its proper disposition within ten (10) days from notice.

The case against Michael Alfon is ordered archived subject to its reinstated [sic] once he is already arrested. Let alias warrant of arrest be issued against him for his immediate apprehension.

SO ORDERED.<sup>16</sup>

The RTC gave more credence to the testimonies of the prosecution witnesses than to accused-appellant's defenses of alibi and frame-up. It ruled that there was nothing unusual with the buy-bust operation conducted by the police officers considering that accused-appellant failed to prove that there was ill motive on the part of the police officers who conducted the operation. The RTC held that the inconsistencies pointed out by accused-appellant regarding the operation were trivial in nature and did not affect the credibility of the prosecution witnesses, the validity of the operation, and the admissibility of the evidence against him. The case against Alfon is ordered archived without prejudice to its revival upon his apprehension.

Accused-appellant thus appealed to the CA.

### *The CA Ruling*

In its August 15, 2018 Decision, the CA affirmed the conviction of accused-appellant for the crime charged. The dispositive portion thereof reads:

ACCORDINGLY, the appeal is DENIED. The Decision dated October 28, 2016 of the Regional Trial Court (RTC), Eleventh (11<sup>th</sup>) Judicial Region, Branch 34, Panabo City, finding accused-appellant Ritchel P. Bacalla guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165), in Criminal Case No. 569-2013 is AFFIRMED.

SO ORDERED.<sup>17</sup>

The CA held that all the elements of illegal sale of marijuana were established by the prosecution. It ruled that accused-appellant was positively identified by PO3 Sugano and PO3 Petilla as the same

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<sup>16</sup> Records, pp. 207-208.

<sup>17</sup> Rollo, p. 16.

person from whom the bundle of marijuana was purchased for a consideration of ₱1,000.00 during a legitimate buy-bust operation. The bundle seized from accused-appellant yielded a positive result for marijuana after a forensic examination. The CA also found that the links in the chain of custody were all present in this case. PO3 Sugano marked the seized item at the place of arrest. Thereafter, he brought the seized item to the police station and retained custody thereof. He personally delivered the seized item for examination by PCI Gucor. On April 30, 2012, the seized item was retrieved and presented in court.

Hence, this appeal.

### Assignment of Errors

#### I.

THE HONORABLE COURT SERIOUSLY ERRED IN SIMPLY CONSIDERING A *PRIMA FACIE* CASE AGAINST THE [ACCUSED-APPELLANT] INSTEAD OF PROOF BEYOND REASONABLE DOUBT;

#### II.

THE HONORABLE COURT SERIOUSLY ERRED IN GIVING EVIDENTIARY [VALUE] TO THE TESTIMONIES OF PROSECUTION WITNESSES DESPITE THEIR CLEAR INCONSISTENCIES;

#### III.

THE HONORABLE COURT SERIOUSLY ERRED IN FINDING THE BUY-BUST OPERATION CONDUCTED BY POLICE OPERATIVES AS NOTHING UNUSUAL AND OUT OF THE ORDINARY[;]

#### IV.

THE HONORABLE COURT GRAVELY ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 5 OF R.A. [NO.] 9165.<sup>18</sup>

In its August 7, 2019 Resolution,<sup>19</sup> the Court required the parties to submit their respective supplemental briefs, if they so desired. In his November 3, 2020 Manifestation with Explanation and

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<sup>18</sup> Id. at 11.

<sup>19</sup> Id. at 21-22.

Compliance,<sup>20</sup> accused-appellant, as represented by the Public Attorney's Office, manifested that he would no longer file a supplemental brief as he was adopting his Appellant's Brief<sup>21</sup> dated November 27, 2017. Similarly, appellee, as represented by the Office of the Solicitor General (*OSG*), averred in its November 18, 2019 Manifestation & Motion,<sup>22</sup> that it would no longer file a supplemental brief considering that it had discussed in its April 4, 2018 Brief for the Plaintiff-Appellee<sup>23</sup> all the matters and issues raised by accused-appellant.

Accused-appellant reiterates his arguments in his appellant's brief before the CA. He argues that the prosecution failed to establish his guilt beyond reasonable doubt and that the RTC did not make a finding of guilt beyond reasonable doubt. Accused-appellant also contends that there was no buy-bust operation given the failure by the buy-bust team to coordinate the operation with the Philippine Drug Enforcement Agency (*PDEA*), and because of PO3 Sugano's inconsistent testimony on the kind of marijuana he bought from accused-appellant. Accused-appellant also points out that there were changes in the wrappings of the marijuana bundle as admitted by PO3 Sugano, which showed that the integrity and evidentiary value of the evidence were not preserved. Lastly, accused-appellant asserts that the chain of custody requirement was not sufficiently satisfied by the prosecution considering the confusion on the kind of marijuana allegedly bought from him.

Appellee, through the OSG, counters that a legitimate buy-bust operation took place which brought about the arrest of accused-appellant, who was caught *in flagrante delicto*. Hence, the bundle of marijuana seized from accused-appellant was admissible in evidence. The OSG also contends that coordination with the PDEA is not an indispensable requirement for the validity of a buy-bust operation. As to the issue on the identity of the drug confiscated from accused-appellant, the OSG asserts that there was no such confusion since PO3 Sugano clearly testified that he bought marijuana fruiting tops, not dried marijuana leaves, from accused-appellant. Likewise, the information filed against accused-appellant and the chemistry report submitted by PCI Gucor clearly indicated that the item seized from accused-appellant was a bundle of marijuana fruiting tops. The OSG also argues that the changes in the wrapping of the bundle of

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<sup>20</sup> Id. at 38-39.

<sup>21</sup> CA *rollo*, pp. 31-56.

<sup>22</sup> *Rollo*, pp. 23-25.

<sup>23</sup> CA *rollo*, pp. 80-103.

marijuana fruiting tops did not affect its integrity and evidentiary value since PO3 Sugano explained in court that he had to open the bundle to confirm the contents before going to court. Moreover, PO3 Sugano was able to identify the evidence in open court because of the markings he had made.

### The Court's Ruling

The appeal is meritorious.

At the outset, accused-appellant's contention that the RTC disregarded the quantum of proof required to convict an accused of a crime, is more apparent than real. A close reading of the RTC decision reveals that the words "*prima facie*" mentioned by the RTC did not pertain to the evidence it appreciated in convicting accused-appellant, but rather in relation to the presumption of regularity in the performance of duties by the police officers, whose testimonies regarding the buy-bust operation were observed by the RTC as deserving of credence *sans* ill will or false motive.

Moreover, accused-appellant's claim that the buy-bust operation was invalidated by the police officers' failure to coordinate with the PDEA is erroneous. The Court has ruled time and again that prior coordination with the PDEA is not an indispensable requirement before police officers may conduct a buy-bust operation.<sup>24</sup> In fact, Sec. 86 of R.A. No. 9165 does not state any consequence in case a buy-bust operation is not coordinated with the PDEA.<sup>25</sup>

As to accused-appellant's argument on the alleged discrepancy on the true subject of the sale, PO3 Sugano explained during his cross-examination:

Cross-examination of PO3 Sugano:

Q: Did you mention it when you asked the accused to buy marijuana from them as to what kind of marijuana are you going to buy, would it be marijuana dried fruiting tops or dried marijuana?

A: I told him that I am going to buy dried "pinaugang" marijuana, sir.

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<sup>24</sup> *People v. Balaquit*, 741 Phil. 343, 351 (2014), citing *People v. Roa*, 634 Phil. 437, 446-447 (2010).

<sup>25</sup> *People v. Caiz*, 790 Phil. 183, 205-207 (2016), citing *People v. Rebotazo*, 711 Phil. 150, 176-177 (2013).

Q: With that "pinaugang marijuana" you are actually referring to leaves?

A: What I mean with that is marijuana dried fruiting tops, sir.

Q: You mean to say, when you told the accused that you are going to buy "pinaugang marijuana" you are actually referring to the marijuana dried fruiting tops?

A: Yes, sir.

Court:

Would it be possible that when you expressed this [to] accused whom you were dealing with at that time that you would like to buy dried marijuana, you just said marijuana without reference whether it could be dried marijuana dried leaves or marijuana dried fruiting tops?

Atty. Camino:

But he already mentioned that what was in his mind was marijuana dried fruiting tops, Your Honor.

Court:

You clarify your answer Officer Sugano, what is your answer to that?

A: Yes, Your Honor, what I mean when I told the accused that I am going to buy pinaugang marijuana is about marijuana dried fruiting tops.<sup>26</sup>

x x x x

Q: What was indicated in the entry was that a bundle of dried marijuana leaves, did you not have that one change or correct it considering that you had that recorded because it stated in the record dried marijuana leaves and not dried marijuana fruiting tops?

Pros. Nuesca:

I object to that, Your Honor, because what the witness did is to report, I think the person to ask that is the person who made the actual recording, the blotter custodian and not the person who reported because we even did not know if this witness read this blotter report.

Court:

Overruled. The question being asked now is the fact that if this witness did call the attention of the blotter officer and ask him to change what he caused to be recorded by him about dried marijuana leaves instead what he should have been reported was about dried marijuana fruiting tops?

A: I was not able to notice what was stated in the blotter entry, Your Honor.

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<sup>26</sup> TSN dated January 22, 2015, pp. 35-36.

Court:

Meaning to say, after you reported you did not bother to examine what was recorded?

A: I read the record but maybe I overlooked what was written, Your Honor.<sup>27</sup>

Contrary to accused-appellant's claim, the prosecution witnesses' testimonies were consistent that the subject of the buy-bust operation were marijuana fruiting tops and not dried marijuana leaves:

Direct Testimony of PO3 Sugano:

Q: After you received it, what did you do with it?

A: I open[ed] the bundle wrapped in newspaper and checked what was inside, ma'am.

Q: You open[ed] it in their presence?

A: Yes, ma'am.

Q: What did you discover when you open that bundle?

A: When I open the wrapping, I saw the one bundle dried marijuana fruiting tops, ma'am.<sup>28</sup>

Direct Examination of PO3 Petilla:

Q: You also mentioned that you were able to recover the marijuana subject matter of this case, if it will be shown to you, will you be able to identify the marijuana?

A: Yes ma'am.

Q: How will you be able to identify it?

A: If we will open it, ma'am.

Q: What will we see if we open it?

A: Marijuana fruiting tops, ma'am.<sup>29</sup>

Evidently, there is no such discrepancy, especially because the Information<sup>30</sup> and Chemistry Report No. D-240-2013<sup>31</sup> also stated marijuana fruiting tops as the subject of the buy-bust operation.

*Noncompliance with Sec.  
21 of R.A. No. 9165*

Nonetheless, the Court finds that the chain of custody rule was not complied with.

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<sup>27</sup> Id. at 39-40.

<sup>28</sup> Id. at 9-10.

<sup>29</sup> TSN dated March 19, 2015, p. 5.

<sup>30</sup> Records, p. 1.

<sup>31</sup> Id. at 4.

It is noteworthy that in criminal cases, such as this case, an appeal throws the entire case open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.<sup>32</sup> The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>33</sup>

Here, a review of the records shows the apprehending team's apparent failure to comply with Sec. 21, Art. II of R.A. No. 9165. There is a significant gap in the chain of custody which raises doubts as to the preservation of the integrity and evidentiary value of the seized item.

Particularly, the prosecution failed to comply with the inventory and taking of photographs of the seized evidence as described under Sec. 21, Art. II of R.A. No. 9165, which states:

*Section 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 (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

On August 7, 2014, R.A. No. 10640 amended Sec. 21 of R.A. No. 9165. Significantly, R.A. No. 10640, reduced the number of representatives required to witness the conduct of the inventory and taking of photographs of the seized item. Only the accused, an

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<sup>32</sup> *Ramos v. People*, 803 Phil. 775, 783 (2017).

<sup>33</sup> *Id.*

elected public official, and a representative from the National Prosecution Service or media, are required by R.A. No. 10640 as witnesses. The amended Sec. 21 states:

*Section 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 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 this case, the alleged crime was committed on November 10, 2013. R.A. No. 10640 is thus inapplicable and the three-witness rule embodied in Sec. 21(1) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 should be applied. The apprehending officers must conduct the physical inventory and take photographs of the seized item in the presence of the accused, an elected public official, a representative from the media, and a representative from the Department of Justice (*DOJ*).

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In this case, only accused-appellant and *Kagawad* Borja were present during the inventory of the seized item at the police station, which is a clear violation of Sec. 21 of R.A. No. 9165.

From the records, it can be gleaned that *Kagawad* Borja arrived at the crime scene five (5) minutes after accused-appellant's arrest. After *Kagawad* Borja's arrival, PO3 Sugano and PO3 Petilla proceeded to mark the bundle of marijuana. During his direct examination, PO3 Sugano testified:

Q: What else did you do, if any, after they were arrested?

A: We called barangay officials to witness the incident, ma'am.

Q: And who was that barangay official who arrived or came to your place?

A: It was *Kagawad* Borja, ma'am.

Q: From what particular barangay this *Kagawad* Borja came from?

A: He is one of the barangay *kagawads* of Brgy. Mangalcal, Carmen, Davao, del Norte, ma'am.

Q: What happened when he arrived in the area?

A: We conducted the marking of the marijuana that we seized from the accused, ma'am.<sup>34</sup>

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Q: How about the picture marked as Exh. "G-4" will you please look at this and tell us who is this *Kagawad* which you said who came in the crime scene?

A: It was *kagawad* Borja, ma'am.<sup>35</sup>

Thereafter, PO3 Sugano and PO3 Petilla brought accused-appellant and the seized item to the police station for the inventory, although it is not clear from the prosecution witnesses' testimonies whether *Kagawad* Borja actually accompanied them to the police station. *Kagawad* Borja's signature, however, appears on the inventory of evidence/property seized.

Interestingly, even though only accused-appellant and, purportedly, *Kagawad* Borja were present during the inventory at the police station, two (2) other signatures appear on the inventory of

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<sup>34</sup> TSN dated January 22, 2015, p. 11.

<sup>35</sup> Id. at 17.

evidence/property seized. A certain King Ramos signed for the media and one Carl P. Montifalcon signed beside the designation “DOJ”; although not once did the prosecution witnesses mention these names in their testimonies. All that PO3 Sugano mentioned during his direct examination was *Kagawad* Borja’s presence during the marking of the confiscated drugs at the place of arrest. Absent actual proof, these surprise signatures, as the witnesses to the conduct of inventory, place doubt as to their credibility and genuineness. These signatures could have been simply placed therein as a mere afterthought, to make it appear that said witnesses were present during the inventory.

Thus, the signatures appearing on the inventory of evidence/property seized have no probative value as these were not properly identified and corroborated by the prosecution witnesses. Uncertainty is therefore engendered whether these witnesses were really present during the inventory of the confiscated item, contrary to the requirement under Sec. 21, Art. II of R.A. No. 9165.

The Court has ruled in numerous cases that the presence of an elected public official and a representative from the DOJ or media is necessary to establish the chain of custody and to remove any suspicion of contamination of evidence which could adversely affect the trustworthiness of the incrimination of the accused.<sup>36</sup>

*Saving clause is not applicable.*

While the chain of custody has been a critical issue leading to acquittals in drug cases, the Court has nevertheless held that noncompliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow.<sup>37</sup>

As a rule, strict compliance with the foregoing requirements is mandatory. However, following the IRR of R.A. No. 9165, the courts may allow a deviation from these requirements if the following requisites under the “saving clause” are availing: (1) the existence of “justifiable grounds” allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the

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<sup>36</sup> *People v. Bangalan*, G.R. No. 232249, September 3, 2018, 878 SCRA 533, 540-541; *People v. Tomawis*, 830 Phil. 385, 408-409 (2018).

<sup>37</sup> See *People v. Denoman*, 612 Phil. 1165, 1178 (2009).

seized items are properly preserved by the apprehending team. If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; *ergo*, the integrity of the *corpus delicti* remains untarnished.<sup>38</sup>

In *Valencia v. People*,<sup>39</sup> it was underscored that the arresting officers are under obligation, should they be unable to comply with the procedures laid down under Sec. 21, to explain why the procedure was not followed and to prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.<sup>40</sup> On the other hand, according to *People v. Adobar*,<sup>41</sup> the integrity of the seized illegal drug, despite noncompliance with Sec. 21, requires establishing the four links in the chain of custody: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>42</sup>

Here, there was nothing in the testimonies of PO3 Sugano and PO3 Petilla that the buy-bust team exhibited any earnest efforts to comply with the witness requirement under Sec. 21, Art. II of R.A. No. 9165. The prosecution even failed to acknowledge the failure by the police officers to comply with the witness requirement. Consequently, the prosecution's failure to acknowledge the deficiency and to provide a justifiable ground therefor cast doubt on the integrity and evidentiary value of the *corpus delicti*.

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 items. A stricter adherence to Sec. 21 is required where the quantity of illegal drugs seized is minuscule since it is highly susceptible to planting, tampering, or alteration, as in this case.<sup>43</sup> Compliance with the procedure under Sec. 21 is likewise

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<sup>38</sup> *People v. Luna*, 828 Phil. 671, 686 (2018).

<sup>39</sup> 725 Phil. 268 (2014).

<sup>40</sup> *Id.* at 286.

<sup>41</sup> 832 Phil. 731 (2018).

<sup>42</sup> *Id.* at 763.

<sup>43</sup> *People v. Oliva*, G.R. No. 234156, January 7, 2019.

determinative of the integrity and evidentiary value of the *corpus delicti* and the fate of the liberty of the accused.<sup>44</sup> Hence, any deviation therefrom, without a sufficient justification, undermines the integrity and evidentiary value of the seized evidence which militates against a finding of guilt beyond reasonable doubt against accused-appellant.

Further, there is doubt whether the integrity and evidentiary value of the seized item were indeed preserved. In the first link, which refers to seizure and marking, “marking” means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.<sup>45</sup>

Marking should be done in the presence of the apprehended violator and the required insulating witnesses, *i.e.*, a representative from the media and the DOJ, and any elected public official, immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.<sup>46</sup>

In this case, the marking was done only in the presence of *Kagawad* Borja, without the required witnesses from the media and the DOJ. Verily, not all of the required insulating persons witnessed the marking of the seized items. Neither was there an attempt of the arresting officers to secure all their presence for the marking, inventory, and photography of the seized item after the buy bust-operation. Hence, the source, identity, and integrity of the seized item remained questionable.

In the prosecution of drug cases, proving that the chain of custody requirements were substantially, if not strictly, complied with by the police officers is as important as establishing the presence of the elements of the crime. This is because prosecutions under the Comprehensive Dangerous Drugs Act revolve around the credibility of the *corpus delicti*,<sup>47</sup> which, in drug cases, is the seized prohibited drug itself. The chain of custody rule ensures that the integrity and

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<sup>44</sup> *People v. Gamboa*, 833 Phil. 1055, 1072-1073 (2018).

<sup>45</sup> *People v. Omamos*, G.R. No. 223036, July 10, 2019, 908 SCRA 367, 379.

<sup>46</sup> *Barayuga v. People*, G.R. No. 248382, July 28, 2020.

<sup>47</sup> *People v. Que*, 824 Phil. 882, 896 (2018).

evidentiary value of the seized prohibited drug are preserved, owing to the unique characteristic of illegal drug that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.<sup>48</sup>

In fine, the Court is constrained to acquit accused-appellant based on reasonable doubt because of the prosecution's failure to prove the *corpus delicti* of the crime and to establish an unbroken chain of custody of the seized drug. Moreover, the prosecution failed to offer any explanation why the provisions of Sec. 21, Art. II of R.A. No. 9165 were not complied with.

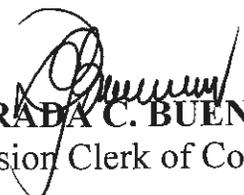
**WHEREFORE**, the appeal is **GRANTED**. The August 15, 2018 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 01698, which affirmed the October 28, 2016 Decision of the Regional Trial Court of Panabo City, Branch 34, in Criminal Case No. CrC 569-2013, finding accused-appellant Ritchel P. Bacalla guilty of violating Section 5, Article II of Republic Act No. 9165, is **REVERSED and SET ASIDE**. Accused-appellant Ritchel P. Bacalla is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director General of the Bureau of Corrections, Muntinlupa City, is **ORDERED** to **IMMEDIATELY RELEASE** accused-appellant from detention, unless he is being lawfully held in custody for any other reason, and to **INFORM** this Court of his action hereon within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

**SO ORDERED."**

**By authority of the Court:**

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

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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<sup>48</sup> *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).



The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

Court of Appeals  
9000 Cagayan de Oro City  
(CA-G.R. CR HC No. 01698)

The Hon. Presiding Judge  
Regional Trial Court, Branch 34  
8105 Panabo City  
(Crim. Case No. CrC-569-2013)

Atty. Marvin G. Camino  
Counsel for Accused-Appellant  
Room 202, 2<sup>nd</sup> Floor, New Borgaily  
Building, San Pedro Street  
8000 Davao City

Mr. Ritchel P. Bacalla  
Accused-Appellant  
c/o The Superintendent  
Davao Prison and Penal Farm  
B.E. Dujali, 8105 Davao del Norte

The Superintendent  
Davao Prison and Penal Farm  
B.E. Dujali, 8105 Davao del Norte

The Director General (x)  
Bureau of Corrections  
1770 Muntinlupa City

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