Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 25, 2023** *which reads as follows:*

"G.R. No. 252147 [*People of the Philippines v. Armando Hayco y Hizon @ "Pendang," Mario Lagrimas y Castañeda (at large), accused; Armando Hayco y Hizon @ "Pendang," accused-appellant*].—On appeal[1] is the February 14, 2019 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 10148 affirming the November 17, 2017 Decision[3] of Branch 42 of Regional Trial Court (RTC) of Manila in Criminal Case Nos. 16-325646-47, finding accused-appellant Armando Hayco *y* Hizon guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs under Section 5, Article II of Republic Act No. (RA) 9165[4] or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

In Criminal Case No. 16-325646, accused-appellant was charged with violation of Sec. 5, Art. II of RA 9165 in an Information[5] that reads:

> That on or about May 28, 2016, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly sell for Php500.00 to PO3 Shiela Marie Tadlas, a police officer/poseur buyer one (1) heat-sealed transparent plastic sachet marked as "AHH" 6:00 PM 5/28/1616 with signature containing ZERO POINT FOUR THREE NINE (0.439) GRAM of white crystalline substance, which, after qualitative examination, gave positive result to the test of Methamphetamine Hydrochloride known as "shabu," a dangerous drug.

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1 *Rollo*, pp. 30-31.

2 Id. at 3-29. Penned by Associate Justice Remedios A. Salazar-Fernando, and concurred by Associate Justices Amy C. Lazaro-Javier (now a Member of the Court) and Marie Christine Azcarraga-Jacob.

3 CA rollo, pp. 61-84. Penned by Presiding Judge Dinnah C. Aguila-Topacio.

4 Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES." Approved on June 7, 2002.

5 Records, pp. 2-3.

CONTRARY TO LAW.[6]

In Criminal Case No. 16-325647, accused-appellant was charged with violation of Sec. 6, Art. II of RA 9165 in an Information[7] that reads:

> That on or about May 28, 2016, in the City of Manila, Philippines, accused, then and there willfully, unlawfully and feloniously maintain a den, dive, or resort at No. 1901 K. Interior 61, Bo. Banana, Pandacan, this City, where Methamphetamine Hydrochloride, known as Shabu, a dangerous drug, is being administered, sold or used in any form.
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> CONTRARY TO LAW.[8]

The above-mentioned cases were consolidated with Criminal Case No. 16-325648 and Criminal Case No. 16-325649, wherein Mario Lagrimas *y* Castañeda (Lagrimas), Raymond Castañeda *y* Marcelo (Castañeda), Daizen Urmineta *y* Sanchez (Urmineta), Rowland Alvarado *y* Galo (Alvarado), Dionisio Lozano *y* Zamora (Lozano), and Nolie Quiambao *y* Gonzales (Quiambao), were charged with violation of Sec. 11(3), in relation to Sec. 13 of Art. II of RA 9165, and Sec. 12 in relation to Sec. 14 of Art. II of RA 9165, respectively.

In Criminal Case No. 16-325648, Lagrimas, and the above-mentioned accused, were charged with violation of Sec. 11(3), in relation to Sec. 13, Art. II of RA 9165 in an Information[9] that reads:

> That on or about May 28, 2016, in the City of Manila, Philippines, the said accused, not having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly have in their possession and under their custody and control of the following, in the company of two or more person during a pot session, to wit:
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> From Accused MARIO LAGRIMAS Y CASTAÑEDA – one (1) heat-sealed transparent plastic sachet marked as "MLC" 6:00PM 5/28/16 with signature containing ZERO POINT FIVE EIGHT NINE (0.589) GRAM;
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> x x x x
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> Contrary to law.[10]

In Criminal Case No. 16-325649, Lagrimas, and the above-mentioned accused, were charged with violation of Sec. 14, Art. II of RA 9165 in an Information[11] that reads:

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6 Id. at 2.
7 Id. at 4-5.
8 Id. at 4.
9 Id. at 6-7.
10 Id.
11 Id. at 8-9.

> That on or about May 28, 2016, in the City of Manila, Philippines, the said accused, not being authorized by law to possess or to have under their control equipment, instrument, apparatus and other paraphernalia fit or intended for injecting, consuming or introducing any dangerous drug into the body, did then and there willfully, unlawfully, knowingly and jointly possess and have under their custody and control the following:
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> x x x x
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> • Two (2) strips of rolled aluminum foil tooter with markings "MLC-1" 6:00PM 5/28/16 with signature and "RMC-1" 6:00PM 5/28/16 each containing traces of white crystalline substance containing Methamphetamine Hydrochloride, known as shabu, a dangerous drug; and
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> x x x x
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> paraphernalias [sic] or instruments which accused have intended to use, as in fact they used the same, for consuming or sniffing shabu, a dangerous drug, in the company of at least two (2) persons during a pot session.
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> Contrary to law.[12]

During his arraignment, accused-appellant entered a plea of "not guilty" for both charges.[13] The other accused, including Lagrimas, also pleaded "not guilty" for the respective charges against them.

Trial on the merits ensued. The prosecution presented the following witnesses: Police Officer 3 Shiela Marie Tadlas (PO3 Tadlas) and Senior Police Officer 2 Conrado Juaño, Jr. (SPO2 Juaño). The prosecution also entered into stipulations with the defense on matters regarding the testimonies of Forensic Chemist Police Investigator Jeffrey A. Reyes (PI Reyes), Duty Investigator SPO2 Luis C. Rufo (SPO2 Rufo), and corroborating witness SPO2 Reynaldo Robles (SPO2 Robles). The defense presented as witnesses the following: accused-appellant, Urmineta, Alvarado, and Lozano. The defense, without objection of the prosecution, dispensed with the testimony of Quiambao and stipulated that the testimony of the said accused will just corroborate the testimony of accused-appellant.[14]

The facts, as alleged by the prosecution, are as follows:

At around 1:00 p.m. on May 28, 2016, Police Senior Inspector Antonio Naag (PSI Naag) of the Station Anti-Illegal Drugs (SAID)-Special Operation Task Force, Police Station 10, Pandacan Police Station, received information from a confidential informant (CI) that a certain "Pendang," later identified to be accused-appellant, was involved in illegal drug activities along Interior 61,

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[12] Id. at 8.
[13] Id. at 64; records, pp. 134-135 (Certificate of Arraignment).
[14] TSN, March 23, 2017, p. 8.

Bo. Banana, Pandacan, Manila.[15] PSI Naag called for a meeting and formed a team to validate the information provided by the CI.[16] The team coordinated with the Philippine Drug Enforcement Agency (PDEA) as evidenced by the stamped receipt of the PDEA in the Pre-Operation Report[17] and the Authority to Operate.[18]

PO3 Tadlas was tasked to act as poseur-buyer in the buy-bust operation and placed the markings "SMT" or her initials on the buy-bust money.[19] The team agreed that, as a pre-arranged signal that the transaction is consummated, PO3 Tadlas will call the cellular phone of the team leader.[20] At around 5:45 p.m. of May 28, 2016, the team composed of seven officers, proceeded to the target area.[21]

While PO3 Tadlas was walking along the target area with the CI, they saw accused-appellant allegedly waiting for buyers of shabu.[22] The CI introduced PO3 Tadlas to accused-appellant as someone interested in buying shabu.[23] PO3 Tadlas informed accused-appellant that she will be buying shabu worth PHP 500.00.[24] Accused-appellant immediately demanded payment from PO3 Tadlas[25] and then told PO3 Tadlas and the CI to follow him[26] to his house. While thereat, they witnessed a group of people having a pot session.[27] The group invited PO3 Tadlas and the CI to join them so they can sample the "items."[28] PO3 Tadlas did not respond to the invitation.[29]

After PO3 Tadlas gave the buy-bust money to accused-appellant and thereafter received from the latter the alleged sachet of shabu, PO3 Tadlas gave the pre-arranged signal and grabbed the right hand of accused-appellant.[30] Back-up operatives rushed to their location to assist in the arrest of accused-appellant and those involved in the pot session.[31] SPO2 Juaño corroborated the foregoing narration of facts as stated in testimony of PO3 Tadlas.[32] SPO2 Juaño added that he arrested Lagrimas as he saw the latter holding in his right hand one piece of aluminum foil tooter.[33] When SPO2 Juaño ordered Lagrimas to empty his pockets, SPO2 Juaño recovered one

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15 Records, p. 13 (Joint Affidavit of Apprehension); TSN, December 13, 2016, p. 2.
16 Records, p. 13 (Joint Affidavit of Apprehension); TSN, December 13, 2016, p. 2.
17 Records, p. 47 (Pre-Operation Report).
18 Id. at 48 (Authority to Operate).
19 TSN, December 13, 2016, p. 8.
20 Records, pp. 13-14 (Joint Affidavit of Apprehension).
21 TSN, December 13, 2016, p. 4.
22 Id.
23 Id.
24 Id.
25 Id.
26 Id. at 4 & 9.
27 Id.
28 Id.
29 Id. at 9.
30 Id. at 4 & 9.
31 Id. at 5 & 9.
32 TSN, December 20, 2016, p. 3.
33 Id. at 3-4.

plastic sachet containing a substance suspected to be shabu.[34] The persons arrested were apprised of their constitutional rights.[35]

The buy-bust operation team looked for barangay officials but claimed that there were no barangay officials available to witness the marking and the inventory of the seized items.[36] People outside the house then started shouting and throwing stones at them.[37] Given the hostile environment, the team decided to mark the evidence and conduct inventory at the police station[38] in the presence of media representative, Danny Garendola.[39] PO3 Tadlas marked the sachet containing shabu that was the subject of the buy-bust operation with the letters "AHH."[40] Thereafter, at around 6:40 p.m., she turned over the recovered evidence to duty investigator SPO2 Rufo.[41] SPO2 Juaño marked the evidence recovered from Lagrimas as "MCL" and "MCL-1," and thereafter also turned over the same to SPO2 Rufo.[42]

Upon receipt of the evidence, SPO2 Rufo prepared a Request for Laboratory Examination.[43] SPO2 Rufo also took photographs at the place of the arrest and prepared the following documents: Joint Affidavit of Apprehension, the Booking Sheet and Arrest Report, the Referral for Inquest dated May 29, 2016, the Request for Drug Test Examination, the Inventory of Seized Properties/Items, the Chain of Custody Form, the Pre-Operation Report, the Authority to Operate, and the Spot Report.[44]

At around 7:55 p.m. of the same date, SPO2 Rufo personally turned over to Forensic Chemist PI Reyes the Letter Request for Laboratory Examination and the evidence attached to the letter, including the aforementioned small heat-sealed transparent plastic sachets marked with "AHH" and "MCL," among others.[45] After receipt of the specimens, PI Reyes placed the same inside a container/evidence bag.[46] PI Reyes placed masking tapes on each specimen and then placed his own initials as well as the date thereon.[47] The results of the qualitative examination on the specimens marked as "AHH," "MCL," and "RMC," as shown in Chemistry Report 474-16,[48] yielded a positive result for methamphetamine hydrochloride, a prohibited dangerous

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34 Id.
35 TSN, December 13, 2016, pp. 5 & 9; TSN, December 20, 2016, p. 4.
36 TSN, December 13, 2016, pp. 5 & 9; TSN, December 20, 2016, p. 4.
37 TSN, December 13, 2016, pp. 5 & 9; TSN, December 20, 2016, p. 4.
38 TSN, December 13, 2016, pp. 5 & 9; TSN, December 20, 2016, p. 4.
39 TSN, December 13, 2016, p. 5; records, pp. 34-40 (Inventory of Seized Properties/Items) & 50-52. (Photographs of Inventory).
40 TSN, December 13, 2016, p. 6.
41 Records, pp. 15 (Chain of Custody Form) & 158; TSN, December 13, 2016, p. 6.
42 Records, p. 158; TSN, December 20, 2016, pp. 4-5.
43 Records, p. 159.
44 Id. at 159-160.
45 Records, pp. 15 (Chain of Custody Form) & 159.
46 Id. at 146.
47 Id.
48 Id. at 48.

drug.[49]

After examination, PI Reyes placed the same plastic sachets inside a self-sealing evidence bag, sealed the bag, and signed it.[50] PI Reyes made his marking on the seal and then turned over the same for safekeeping purposes to the evidence custodian of the Manila Police District Crime Laboratory, PO3 Jeffrey Herrera (PO3 Herrera).[51] Before coming to court, PI Reyes retrieved the same evidence bag bearing the same markings from PO3 Herrera.[52] PI Reyes then brought to court the same evidence intact and duly sealed in the same manner that he first turned it over to the evidence custodian.[53]

As to the other accused in Criminal Case No. 16-325648 and Criminal Case No. 16-325649, except for Lagrimas, the prosecution and the defense dispensed with the testimony of SPO2 Robles and stipulated on the dangerous drugs and/or drug paraphernalia confiscated from Urmineta, Alvarado, Lozano, and Quiambao.[54]

The facts, as alleged by the defense, are as follows:

Accused-appellant testified that he was arrested at around 7:00 p.m. on May 27, 2016, not May 28, 2016.[55] Prior to his arrest, he was standing in front of his house when his friend Quiambao, one of the accused in Criminal Case No. 16-325648 and Criminal Case No. 16-325649, approached him and asked to borrow his cellular phone charger.[56] Accused-appellant claimed that armed persons in civilian clothes, who he assumed were police officers, suddenly arrived in front of his house.[57] One of the alleged police officers, who accused-appellant heard was called "Evangelista," frisked both accused-appellant and his friend, Quimbao, while the other armed persons proceeded to search the alleys nearby.[58] When the police officer did not recover anything, accused-appellant asked him why they were being arrested, but they were simply told to "just wait there."[59] After 20 minutes, the companions of the person who arrested accused-appellant arrived with other arrested persons that accused-appellant did not recognize.[60] They were then brought to Police Station 10 and taken to the room of SAID where they saw PO3 Tadlas and SPO2 Rufo.[61] Accused-appellant also saw "evidence" placed on top of a

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[49] Id. at 152 (Chemistry Report No. D-474-16).
[50] Id. at 149.
[51] Id.
[52] Id.
[53] Id.
[54] Id. at 285-286; TSN, December 20, 2016, p. 6.
[55] TSN, March 23, 2017, p. 2.
[56] Id. at 3.
[57] Id.
[58] Id.
[59] Id.
[60] Id.
[61] Id.

table.[62] Accused-appellant claimed that PO3 Tadlas forced them to point at the evidence on top of the table and took pictures of them doing the same.[63] They were thereafter detained in a cell and then subjected to inquest proceedings the next day.[64]

The testimonies of Urmineta and Lozano, both accused in Criminal Case No. 16-325648 and Criminal Case No. 16-325649, corroborated a part of accused-appellant's narration of events, particularly, that they were brought to the police station, photographed with "evidence," returned to jail, and subjected to inquest proceedings the following day.[65]

Alvarado, also one of the accused in Criminal Case No. 16-325648 and Criminal Case No. 16-325649, provided his own narration of facts which included an allegation that a certain police officer named Atienza demanded PHP 10,000.00 from him so that he will be charged with a lesser offense.[66] He also claimed his photograph was taken pointing to objects that appear to be drugs in a plastic sachet.[67]

Ruling of the Regional Trial Court

In its November 17, 2017 Decision,[68] the trial court convicted accused-appellant of Illegal Sale of Dangerous Drugs under Sec. 5, Art. II of RA 9165 in Criminal Case No. 16-325646. The trial court found that the prosecution was able to not only sufficiently prove the existence of all the essential elements of the crime charged, but also account for every link in the chain of custody of the seized dangerous drug.

The RTC also convicted accused Lagrimas of Illegal Possession of Dangerous Drugs under Sec. 11(3), Art. II and Illegal Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs under Sec. 12, Art. II of RA 9165 in Criminal Case No. 16-325648 and Criminal Case No. 16-325649, respectively.

With regard to Criminal Case No. 16-325647 wherein accused-appellant was charged with violation of Sec. 6, Art. II of RA 9165 pertaining to the "Maintenance of a Den, Dive, or Resort," the trial court found that the prosecution failed to establish that accused-appellant owns or rents the place where the alleged pot session was held, nor was it adequately shown that he was the one maintaining it. Hence, accused-appellant was acquitted of violation of Sec. 6, Art. II of RA 9165 Criminal Case No. 16-325647.

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[62] Id.
[63] Id.
[64] Id.
[65] TSN, April 20, 2017, p. 4; TSN, June 22, 2017, p. 3.
[66] TSN, June 1, 2017, p. 4.
[67] Id.
[68] Records, pp. 348-371.

All of the accused in Criminal Case No. 16-325648 and Criminal Case No. 16-325649, except Lagrimas, were also acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt. The prosecution and the defense merely stipulated on the supposed testimony of the arresting officers regarding the arrest of the accused and the confiscation of the dangerous drugs and/or drug paraphernalia retrieved from their possession. Hence, since the evidence against the accused were not clearly adduced in court by the prosecution and not challenged by the defense, Castañeda, Urmineta, Alvarado, Lozano, and Quiambao were acquitted of all charges.

The dispositive portion of the RTC judgment reads:

> **WHEREFORE**, judgment is rendered as follows:
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> In **Criminal Case No. 16-325646**, the Court finds accused **ARMANDO HIZON HAYCO GUILTY** beyond reasonable doubt of violation of Sec. 5, Art. II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00).
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> In **Criminal Case No. 16-325647**, for failure of the prosecution to prove his guilt [beyond] reasonable doubt, accused **ARMANDO HIZON HAYCO** is hereby **ACQUITTED** of violation of Section 6, Art. II, Republic Act 9165.
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> In **Criminal Case No. 16-325468**, the Court finds accused **MARIO CASTANEDA LAGRIMAS GUILTY** beyond reasonable doubt of violation [of] (sic) Sec. 11 (3), Article II of RA 9165 and is hereby sentenced to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) month, as minimum, to fourteen (14) years and eight (8) months as maximum, and to pay a fine of Three Hundred Thousand Pesos (Php300,000.00).
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> On the other hand, accused **RAYMOND MARCELO CASTANEDA, DAIZEN SANCHEZ URMINETA, ROWLAND GALO ALVARADO, DIONISIO ZAMORA LOZANO, and NOLIE GONZALES QUIAMBAO** are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.
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> In **Criminal Case No. 16-325649**, the Court likewise finds accused **MARIO CASTANEDA LAGRIMAS GUILTY** beyond reasonable doubt of violation of Sect. 12, Article II of RA 9165 and is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) months and ten (10) days as minimum to one (1) year and two (2) months as maximum, and to pay a fine of Ten Thousand Pesos (Php10,000.00).
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> On the other hand, accused **RAYMOND MARCELO CASTANEDA, DAIZEN SANCHEZ URMINETA, ROWLAND GALO ALVARADO, DIONISIO ZAMORA LOZANO, and NOLIE GONZALES QUIAMBAO** are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

> The Jail Warden of Manila City Jail is hereby ordered to release from their custody the persons of **RAYMOND MARCELO CASTANEDA, DAIZEN SANCHEZ URMINETA, AND NOLIE GONZALES QUIAMBAO** unless there are other legal impediments where their release may be held in abeyance.
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> The specimens are forfeited in favor of the government to be turned-over to the Philippine Drug Enforcement Agency (PDEA) for disposal in accordance with the law and rules provided there is no further need for the same to be presented in other case/s.
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> **SO ORDERED**.[69]

On November 21, 2017, accused-appellant appealed his conviction to the appellate court.[70] In his brief, accused-appellant assailed the credibility of the testimony of PO3 Tadlas and averred that the prosecution failed to establish an unbroken chain of custody of the seized dangerous drugs as well as show compliance with Sec. 21, Art. II of RA 9165, as amended.[71]

Ruling of the Court of Appeals

In its February 14, 2019 Decision,[72] the CA affirmed the trial court's judgment of conviction. The CA found that the totality of evidence presented by the prosecution adequately established the essential elements of Illegal Sale of Dangerous Drugs under Sec. 5, Art. II of RA 9165 and also accounted for the unbroken chain of custody of the seized items.

The *fallo* of the CA's Decision reads:

> **WHEREFORE**, premises considered, the appealed decision dated November 17, 2017 of the RTC, Branch 42, Manila, in Criminal Cases Nos. 16-325646-67 and 16-325648-49 is hereby **AFFIRMED**.
>
> **SO ORDERED.**[73]

In view of the CA's adverse Decision, accused-appellant filed a Notice of Appeal on March 11, 2019.[74]

Issue

Whether accused-appellant is guilty of Illegal Sale of Dangerous Drugs under Sec. 5, Art. II of RA 9165.

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69 CA *rollo*, pp. 82-84.
70 Records, p. 374.
71 *Rollo*, pp. 40-58.
72 Id. at 3-29.
73 Id. at 28.
74 Id. at 30.

Our Ruling

The appeal is meritorious. The prosecution failed to present sufficient evidence establishing the links of the chain of custody thus casting doubt as to the preservation of the integrity of the seized items.

The Court acquits accused-appellant. Since the items confiscated from co-accused Lagrimas were handled and processed the same way as the seized item subject of the buy-bust operation against accused-appellant, the Court deems it proper to also acquit Lagrimas.

Although only accused-appellant appealed his case to this Court, an appeal of a criminal case opens the entire case for review on both questions of law and fact, whether or not raised by the parties,[75] to wit:

> It is well-settled that in criminal cases, an appeal throws the entire case wide 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. 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.[76]

This Court may thus review the findings of the courts *a quo* even on unassigned errors in the appealed judgment. Considering that the particular facts and circumstances surrounding the arrest of the parties in the consolidated cases and the processing of evidence therein are closely intertwined, it necessarily follows that the acquittal of accused-appellant based on compliance with Sec. 21 of RA 9165, as amended, and the Chain of Custody Rule will also be favorable to co-accused Lagrimas.

In Criminal Case No. 16-325646, accused-appellant was charged with the crime of Illegal Sale of Dangerous Drugs under Sec. 5, Art. II of RA 9165. The elements of Illegal Sale of Dangerous Drugs are the following: "(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."[77]

In Criminal Case No. 16-325648 and Criminal Case No. 16-325649, Lagrimas was charged with Illegal Possession of Dangerous Drugs under Sec. 11, Art. II of RA 9165 and Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings under Sec. 14, Art. II of RA 9165, respectively.

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[75] *People v. Bernardo*, G.R. No. 242696, November 11, 2020; *People v. Guanzon*, 839 Phil. 1122, 1136 (2018).
[76] *People v. Bernardo*, id.
[77] *People v. Cuevas*, 842 Phil. 709, 715 (2018).

The elements of Illegal Possession of Dangerous Drugs under Sec. 11, Art. II of RA 9165 are as follows: "(a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug."[78] Sec. 14 provides that the maximum penalty in Sec. 12 of RA 9165 must be imposed "upon any person, who shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons." Since the trial court found that the prosecution failed to present adequate proof that the accused was, at the time of arrest, in a drug den and in a party or at a social gathering or meeting, or in the proximate company of at least two persons, the trial court did not impose the maximum penalty in Sec. 14 of Art. II of RA 9165. Accused Lagrimas was convicted under Sec. 12 of Art. II of RA No. 9165 instead. The elements of Illegal Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs under Sec. 12 of Art. II of RA 9165 are (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[79]

The identity of the object or the seized dangerous drug and/or paraphernalia is the *corpus delicti* of the crime and thus must be established with moral certainty.[80] Indeed, in the case of *Fuentes v. People*,[81] the Court declared:

> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.
>
> To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[82]

"Chain of Custody" pertains to the "duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court."[83] The Court has consistently recognized the following links that must be established in the chain of custody in a buy-bust

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78 *People v. Rivera*, G.R. No. 252886, March 15, 2021.
79 *People v. Lumen*, G.R. No. 240749, December 11, 2019.
80 845 Phil. 379 (2019).
81 Id.
82 Id. at 385-386.
83 *People v. Bangcola*, 849 Phil. 742, 753 (2019).

situation: *first*, the seizure and marking, if practicable, of the illegal drug and/or drug paraphernalia recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug and/or drug paraphernalia seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug and/or drug paraphernalia to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug and/or drug paraphernalia seized from the forensic chemist to the court.[84]

Although the Court has recognized that strict compliance with the Chain of Custody Rule is not always possible, deviations from the procedure may be allowed only when the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for noncompliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved.[85] The Court, once again in *Fuentes v. People*,[86] clarified that the Chain of Custody Rule is not a mere technical rule of procedure that courts may, in their discretion, opt to relax but is an administrative protocol, embodied in law, that law enforcement officers and operatives are enjoined to implement as part of their police functions:

> At this juncture, the Court takes this opportunity to clarify that compliance with the chain of custody rule is not a mere technical rule of procedure that courts may, in their discretion, opt to relax. In the first place, the chain of custody procedure is embodied in statutory provisions which were 'crafted by Congress as safety precautions to address potential police abuses [in drugs cases], especially considering that the penalty imposed may be life imprisonment.' It is not a Supreme Court-issued rule of procedure created under its constitutional authority to '[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts.' Rather, it is an administrative protocol that law enforcement officers and operatives are enjoined to implement as part of their police functions. Indeed, while the chain of custody rule is 'procedural' in the sense that it sets a step-by-step process that must be followed, it is *by no means remedial in nature* since it is not, properly speaking, a requirement or process that pertains to court litigation.
>
> At most, insofar as an actual court proceeding is concerned, it is the compliance with the chain of custody procedure, or the presence of justifiable reasons for non-compliance, which must be proved; in this relation, it is the *procedure of proving the same* which is prescribed in the ordinary rules of evidence, which is, on the other hand, what our courts have discretion over. Thus, when a court finds that non-compliance with the chain of custody rule is allowable, it does not exercise its discretion to relax a Court-issued rule; rather, it determines that the prosecution was able to prove that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary

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[84] *People v. Villalon*, G.R. No. 249412, March 15, 2021; *People v. Kamad*, 624 Phil. 289, 304 (2010).
[85] *Fuentes v. People*, supra at 386.
[86] Id.

> value of the seized items are properly preserved. In so doing, the court only applies the saving-clause found in the law.[87]

As emphasized by this Court in *Saraum v. People*,[88] "in ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under [Sec.] 21 (1), [Art.] II of [RA 9165] has been complied with or falls within the saving clause provided in [Sec.] 21 (a), [Art.] II, of the Implementing Rules and Regulations (IRR) of [RA 9165] **and** (b) there was an unbroken link *(not perfect link)* in the chain of custody with respect to the confiscated items."[89]

After a careful review of the records of the case, We find that the prosecution failed to clearly establish all the links in the chain of custody and such failure raises doubts as to the preservation of the integrity and evidentiary value of the seized items.

With regard to the ***first*** link requiring the seizure and marking of the illegal drug recovered from the accused by the apprehending officer, the Court agrees with the finding of the court *a quo* that the marking of the seized items may be done at the nearest police station.

In the case of *People v. Resurreccion*,[90] citing *People v. Gum-Oyen*,[91] the Court held that the marking of the seized items must be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation. "Marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team, *to wit:*

> What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.
>
> To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate Confiscation" has no exact definition. Thus, in *People v. Gum-Oyen*, **testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody.**

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87 Id. at 387-388. Citations omitted.
88 779 Phil. 122 (2016).
89 Id. at 130-131.
90 *People v. Resurrecion*, 618 Phil. 520 (2009).
91 *People v. Gum-Oyen*, 603 Phil. 665 (2009).

Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[92]

PO3 Tadlas and SPO2 Juaño both testified that they marked the evidence recovered from accused-appellant and Lagrimas, respectively, at the police station[93] allegedly because the people outside the house then started shouting and throwing stones at them.[94] Thus, considering the hostile environment, the team decided to mark the evidence and conduct inventory at the police station.[95] However, even on the assumption that this so-called hostile environment is a reasonable justification for the marking to be done at the police station and not at the place of arrest, still, the prosecution failed to establish the measures it took to preserve the identity and integrity of the confiscated items while in transit from the situs of the crime to the police station. Moreover, it is unclear if the **marking** was done in the presence of all of the accused. Instead, the prosecution presented photographs of all of the accused during the **inventory** of the seized items. Also, only the media representative was in attendance during the inventory;[96] no elected official was present.

RA 10640[97]which amended Sec. 21(1) of RA 9165, provides that, upon seizure of the dangerous drugs and/or drug paraphernalia, the apprehending team must conduct a physical inventory of the seized items and photograph the same in the presence of the accused and certain witnesses:

> 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 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

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[92] *People v. Resurreccion*, supra at 531-532.
[93] TSN, December 13, 2016, p. 6; records, p. 158; TSN, December 20, 2016, pp. 4-5.
[94] TSN, December 13, 2016, pp. 5 & 9; TSN, December 20, 2016, p. 4.
[95] TSN, December 13, 2016, pp. 5 & 9; TSN, December 20, 2016, p. 4.
[96] Records, pp. 50-52 (Photographs of Inventory).
[97] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved on July 15, 2014.

> 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 the case of *People v. Mendoza*,[98] this Court held that the insulating presence of all the required witnesses preserves the unbroken chain of custody, to wit:

> 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 sachets of *shabu*, 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 sachets of *shabu* 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.[99]

Moreover, in *People v. Ramos*,[100] the Court stated that the apprehending team must adduce "a justifiable reason for such failure or showing of any genuine and sufficient effort to secure the required witnesses," especially considering that police officers are expected to make the necessary arrangements beforehand knowing full well they would have to comply with the procedure prescribed in Sec. 21 of RA 9165, to wit:

> X x x, it is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, **a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*,[41] the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for '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.' Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. **These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance,**

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98 736 Phil. 749 (2014).
99 Id. at 764.
100 837 Phil. 473, 486 (2018).

> **but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.**[101]

In the present case, the Inventory of Seized Properties/Items and photographs of the inventory show that the inventory was conducted in the presence of only the media representative.[102] The apprehending team merely claimed that the other required witness, an elected public official, was not available. As apparent in PO3 Tadlas' testimony, the apprehending team simply stated that the barangay officials did not go to the site of the arrest:

> [SACP MENDOZA]: And when the back-up came to your rescue, what happened next?
> [PO3 Tadlas]: We apprehended them and we appraised [them] of their constitutional rights, sir.
>
> Q: After that?
> A: After that, [sic] we look [sic] for the Barangay Officials to assist us but [there were] no Barangay Officials at that time. [sic] They did not go or come, sir.
>
> Q: After when nobody came from the Barangay?
> A: We heard shouts of many people outside and may *nambabato na*, sir, so we decided to go to the police station.[103]

The prosecution did not present any evidence showing that the apprehending team made any effort to secure the presence of the barangay official prior to the conduct of the buy bust operation or even after arrest and upon arrival at the police station. There was also no showing that the team searched for other elected public officials, not necessarily barangay officials, to serve as witnesses in the inventory of the seized items. The apprehending team was informed of the alleged illegal activities transpiring in the target area at least four hours before they conducted the buy bust operation. PO3 Tadlas even testified that they validated the information, prepared an intelligence report, and conducted a test-buy prior to the buy-bust operation.[104] Despite sufficient time to secure the required witnesses as prescribed under Sec. 21 of RA 9165, as amended by RA 10640, the apprehending team still failed to comply with the witness requirement and provide justifiable ground for such noncompliance.

The prosecution also notably did not present as witness the evidence custodian, PO3 Herrera, which shows a lapse in the ***fourth*** link pertaining to the turnover and submission of the seized illegal drug and/or drug paraphernalia from the forensic chemist to the court. In the recent case of

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[101] Id. at 486-487. Emphasis supplied.
[102] TSN, December 13, 2016, p. 5; records, pp. 34-40 (Inventory of Seized Properties/Items) & 50-52 (Photography of Inventory).
[103] Id. at 5.
[104] Id. at 11.

People v. Orcullo,[105] this Court held that the absence of the testimony of the evidence custodian presents a break in the links in the chain of custody of evidence.

Since the prosecution simply entered into stipulations with the defense as to the testimony of Forensic Chemist PI Reyes, PI Reyes did not provide any further details as to the handling of the seized item before the same was presented in court. PI Reyes merely claimed in the stipulations that "the evidence presented in court is intact and duly sealed in the same manner that he first turned it over to the evidence custodian."[106] The prosecution did not provide any evidence as to how the specimens were preserved in the custody of PO3 Herrera, who also handled the evidence after qualitative examination of the same and prior to the presentation before the court.

Indeed, as held by the Court in *People v. Dahil*,[107] the accused should be acquitted if there is "no showing that precautions were taken to ensure that there was no change in the condition of that object and no opportunity for someone not in the chain to have possession thereof:"

> The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs[,] but the parties resorted to a general stipulation of her testimony. Although several subpoena[s] were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.
>
> The case of *People v. Gutierrez* also had inadequate stipulations as to the testimony of the forensic chemist. No explanation was given regarding the custody of the seized drug in the interim — from the time it was turned over to the investigator up to its turnover for laboratory examination. The records of the said case did not show what happened to the allegedly seized *shabu* between the turnover by the investigator to the chemist and its presentation in court. Thus, since there was **no showing that precautions were taken to ensure that there was no change in the condition of that object and no opportunity for someone not in the chain to have possession thereof, the accused therein was likewise acquitted**.[108]

Malilin v. People[109] and *People v. Año*[110] (*Año*) affirmed the foregoing rulings and emphasized that it is the prosecution's duty to present evidence

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[105] G.R. No. 229675, July 8, 2019.
[106] Records, p. 149.
[107] 750 Phil. 212, 238 (2015).
[108] Id. at 237-238. Emphasis supplied; citations omitted.
[109] 576 Phil. 576, 587 (2008).
[110] 828 Phil. 439, 448 (2018).

establishing **each** link of the chain of custody presenting how every person who touched the exhibit should "describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain" as well as the "precautions taken to ensure that there had been no change in the condition of the item and that there had been no opportunity for someone not in the chain to have possession of the same.

In *Año*, the prosecution did not provide any justifiable ground for noncompliance with the Chain of Custody Rule and Sec. 21 of RA 9165. As emphasized by the Court in *People v. Almorfe*[111] and *People v. De Guzman*,[112] justifiable ground for noncompliance must be proven as fact and the Court cannot presume what these grounds are or if they even exist, to wit:

> F**or the saving clause to apply, x x x the prosecution should explain the reasons behind the procedural lapses, and that the integrity and [evidentiary] value of the seized evidence had been preserved**.[113]

The State bears the burden of proving the elements of the crimes and any doubt in the identity and integrity of the *corpus delicti* warrants the acquittal of the accused.[114]

In view of such lapses in the chain of custody of the seized items, and absent any justifiable reason for noncompliance with Sec. 21 of RA 9165, as amended, the prosecution thus failed to prove that accused-appellant and Lagrimas are guilty beyond reasonable doubt of the crimes charged against them. The presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence in favor of the accused.[115]

As to the charges against Lagrimas, in the case of *People v. Bernardo*[116] citing Sec. 11, Rule 122 of the Rules of Court, the Court held that an appeal shall not affect those who did not appeal but an acquittal can benefit the co-accused who did not appeal, to wit:

> This is pursuant to Section 11, Rule 122 of the Revised Rules of Criminal Procedure, which reads:
>
> Section 11. *Effect of appeal by any of several accused.* —

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[111] 631 Phil. 51 (2010).
[112] 630 Phil. 637 (2010).
[113] *People v. Almorfe*, supra at 60. Citations omitted; emphasis supplied.
[114] *People v. Manabat*, G.R. No. 242947, July 17, 2019.
[115] *People v. Catalan*, 699 Phil. 603, 621 (2012).
[116] G.R. No. 242696, November 11, 2020.

> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.[117]

The evidence subject of the buy-bust operation against accused-appellant and the item allegedly seized from the possession of Lagrimas were handled in similar manner and, thus, warrants the application of the foregoing pronouncement. Even if Lagrimas did not appeal the assailed Decision, the acquittal of accused-appellant necessarily calls for the acquittal of Lagrimas.

In Criminal Case No. 16-325648, Lagrimas was charged with Illegal Possession punishable under Sec. 11(3) in relation to Sec. 13, Art. II of RA 9165. As earlier observed from the testimonies of PO3 Tadlas and SPO2 Juaño, there is no clear showing that the seized item was marked as "MCL" by SPO2 Juaño in the presence of the accused. Moreover, the Inventory of Seized Properties/Items and photographs of the inventory show that the inventory was conducted in the presence of the media representative only,[118] contrary to the requirement under Sec. 21 of RA 9165, as amended, that the inventory must be done in the presence of "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."[119] The prosecution failed to show that law enforcement exercised earnest efforts in securing the presence of the required witnesses before, during, and after the buy-bust operation and prior to the inventory. The apprehending team also did not provide justifiable ground for such noncompliance. The apprehending team merely claimed that, despite having opportunity to secure witnesses before conducting the buy-bust operation, they looked for barangay officials at the time of the arrest but no barangay officials heeded their call.

The seized item marked "MCL" was one of the specimens indicated in Chemistry Report 474-16 prepared by PI Reyes.[120] Similar to the seized item marked "AHH" in the case of accused-appellant, the prosecution did not provide any evidence as to how the specimens were preserved in the custody of the evidence custodian, who also handled the evidence after qualitative examination of the same and prior to the presentation before the court.

As concluded in the case of the accused-appellant, the foregoing lapses in the chain of custody of the item seized from his co-accused Lagrimas, as well as the noncompliance of the apprehending team with the witness requirement in Sec. 21 of RA 9165, as amended, warrant the acquittal of

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[117] Id.
[118] TSN, December 13, 2016, p. 5; records, pp. 34-40 (Inventory of Seized Properties/Items) & 5-52 (Photographs of Inventory).
[119] REPUBLIC ACT NO. 9165, AS AMENDED BY REPUBLIC ACT NO. 10640, §1. Emphasis Supplied.
[120] Records, p. 148.

Lagrimas from the charge of Illegal Possession punishable under Sec. 11(3), in relation to Sec. 13, Art. II of RA 9165.

With particular regard to the chain of custody pertaining to the drug paraphernalia allegedly seized from Lagrimas marked as "MCL-1" and subject of Criminal Case No. 16-325649, the prosecution did not present any evidence that the same was subjected to a similar qualitative examination to confirm that such object was indeed used as a drug paraphernalia. The prosecution failed to show compliance with Sec. 21 of RA 9165 in handling said evidence. The prosecution also did not present evidence to prove an unbroken chain of custody, from seizure of the drug paraphernalia from the accused, to presentation of the same before the court.

Hence, the Court deems it proper to acquit both accused-appellant and Lagrimas.

WHEREFORE, the appeal is hereby **GRANTED**. The February 14, 2019 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 10148 is **REVERSED and SET ASIDE**. Accused-appellant **ARMANDO HAYCO *y* HIZON** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections, New Bilibid Prisons, Muntinlupa City, 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.

Likewise, the November 17, 2017 Decision of Branch 42 of Regional Trial Court (RTC) of Manila in the consolidated cases of Criminal Case No. 16-325648 and Criminal Case No. 16-325649 is **REVERSED** and **SET ASIDE** insofar as accused **MARIO LAGRIMAS *y* CASTAÑEDA** is concerned. **MARIO LAGRIMAS *y* CASTAÑEDA** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The order for his immediate arrest is **LIFTED.**

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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Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 10148)

The Hon. Presiding Judge
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(Crim. Case Nos. 16-325646 to 47)

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