



Republic of the Philippines  
Supreme Court  
Cagayan de Oro City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 6, 2023** which reads as follows:*

**“G.R. No. 258290 (*People of the Philippines v. Rudy Bag-ay y Bogya a.k.a. “Ruben B. Marciano”*)**.—This is an appeal<sup>1</sup> from the February 19, 2021 Decision<sup>2</sup> of the Court of Appeals (CA) in CA–G.R. CR-HC No. 13021 affirming the April 5, 2019 Joint Decision<sup>3</sup> of the Regional Trial Court (RTC), Branch 61, Baguio City, in Criminal Case Nos. 36881-R and 36882-R, which found accused-appellant Rudy Bag-ay y Bogya<sup>4</sup> (Bag-ay) guilty beyond reasonable doubt of violating Sections 5 and 12, Article II of Republic Act No. (RA) 9165,<sup>5</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

**The Factual Antecedents**

This case arose from two separate Informations charging Bag-ay with Illegal Possession of Drug Paraphernalia and Illegal Sale of Dangerous Drugs, respectively, to wit:

**Criminal Case No. 36881-R**

That on or about the 10<sup>th</sup> day of February, [sic] 2015, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully unlawfully and feloniously have in his possession, control and custody gray pouch labeled DR. CI: Labo containing one (1) casio electronic calculator; one (1) improvised lamp, one (1) plastic cellophane labeled calypso containing several pieces of transparent plastic sachets, four (4) pieces improvised plastic

<sup>1</sup> *Rollo*, pp. 3-5.

<sup>2</sup> *Id.* at 8-22. Penned by Associate Justice Ruben Reynaldo G. Roxas, and concurred in by Associate Justices Myra V. Garcia-Fernandez and Alfredo D. Ampuan.

<sup>3</sup> *Id.* at 27-48. Penned by Acting Presiding Judge Miajoy C. Oallares-Cawed.

<sup>4</sup> Also known as Ruben B. Marciano or Ruben Marciano y Bogya.

<sup>5</sup> 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.” [COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002]. Approved: June 7, 2002.

tooters; two (2) transparent plastic tubes, and one (1) pair of stainless scissors, [sic] paraphernalia for dangerous drugs, in violation of the aforementioned provision of law.

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

#### **Criminal Case No. 36882-R**

That on or about the 10<sup>th</sup> day of February, [sic] 2015, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver eight (8) heat-sealed transparent plastic sachet [sic] containing methamphetamine hydrochloride, a dangerous drug, having a total weight of 1.4978 grams, for Php7,000.00 to AGENT JERICK CAPUYAN, a member of the PDEA who acted as the poseur buyer, in violation of the aforementioned provision of law.

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

Upon arraignment, Bag-ay pleaded not guilty to both charges.<sup>8</sup> Joint proceedings ensued.

#### **Version of the Prosecution**

At around 9:00 a.m. of February 9, 2015, a confidential informant (CI) arrived at the Philippine Drug Enforcement Agency (PDEA) Regional Office, Cordillera Administrative Region.<sup>9</sup> He was interviewed by Agent Jose Ramirez, Jr. (Agent Ramirez). The CI reported that a certain Rudy Bag-ay is engaged in selling shabu in Baguio City; he knew Bag-ay as he used to buy shabu from him (Bag-ay) in the past.<sup>10</sup> The CI met Bag-ay a few days earlier and the latter told him that he (the CI) will get a commission if he finds a buyer of shabu worth PHP 7,000.00.<sup>11</sup> Should there be a buyer, they will meet near Grace Baptist Church in Brgy. Sto. Rosario, Baguio City, between 2:00 a.m. to 5:00 a.m on February 10, 2015.<sup>12</sup>

Thus, Agent Ramirez conducted a briefing for a buy-bust operation. A buy-bust team was then created consisting of Agent Jerick Capuyan (Agent Capuyan) as poseur-buyer, Agent Samuel Poking, Jr. (Agent Poking) as arresting officer, and Agent Darriel Baclili (Agent Baclili) as seizing officer.<sup>13</sup> One PHP 1,000.00 bill and six pieces of fake money will be used as marked money. Agent Capuyan removing his jacket is the pre-arranged signal that the sale has been consummated.<sup>14</sup>

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

<sup>7</sup> Id. at 25.

<sup>8</sup> Id. at 53.

<sup>9</sup> *Rollo*, p. 10.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

Thereafter, the CI received a phone call from Bag-ay asking him if he had already found a buyer; the CI affirmed and gave the phone to Agent Capuyan.<sup>15</sup> Agent Capuyan agreed to buy accused's offer of PHP 7,000.00 worth of shabu. They agreed to meet in Brgy. Sto. Rosario between 2:00 a.m. to 3:00 a.m. of the following day.<sup>16</sup>

At around 1:00 a.m. of the next day, February 10, 2015, the buy-bust team together with the CI proceeded to Grace Baptist Church in Brgy. Sto. Rosario. Upon arrival, Agent Capuyan and the CI stayed at a waiting shed near the church, while the other agents strategically positioned themselves near the area.<sup>17</sup> After a while, a man of medium build, who was later identified as Bag-ay, approached Agent Capuyan and the CI; the CI introduced Agent Capuyan as the buyer.<sup>18</sup>

Bag-ay asked Agent Capuyan if he had the money with him, to which the latter confirmed; in turn, Agent Capuyan asked Bag-ay if he had the shabu with him.<sup>19</sup> Bag-ay then handed over a red pouch to Agent Capuyan, and showed the contents to him.<sup>20</sup> After examining the contents of the pouch, Agent Capuyan handed over the marked money.<sup>21</sup> He then executed the signal by removing his jacket, prompting the other team members to rush to the scene.<sup>22</sup> The team identified themselves as PDEA agents and effected the arrest of Bag-ay.

Agent Capuyan recovered eight sachets of suspected shabu inside the red pouch; while on site, he immediately marked the red pouch with "JAC-A," and the sachets with "JAC-A1" to "JAC-A8."<sup>23</sup> Agent Baclili then conducted a body search and recovered from Bag-ay the marked money, a black cellphone with sim card, and a gray pouch labeled "DR. CI: Labo."<sup>24</sup> The gray pouch further contains the following items: an electronic calculator, an improvised lamp, a plastic cellophane labeled "Calypso" containing several pieces of transparent plastic sachets, four pieces of improvised plastic tooters, two transparent plastic tubes, a pair of scissors, a dark blue planner, a bankbook, an employee identification card bearing the name "Ruben Bogya Mariano," and a driver's license bearing the name "Ruben Bogya Mariano."<sup>25</sup> All of these were promptly marked after recovery.<sup>26</sup>

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at 11.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Records, pp. 12-13.

Bag-ay and the seized items were subsequently brought to Baguio City Police Office, Station 5.<sup>27</sup> There, Agent Capuyan prepared an inventory of the seized items in the presence of *Barangay Kagawad* Modesto Bantic and Breves Bulsao of Bombo Radyo.<sup>28</sup> Agent Capuyan then brought the suspected shabu to forensic chemist Rogelio M. Calleja, Jr. (Forensic Chemist Calleja) for qualitative examination.<sup>29</sup> The substances yielded positive for the presence of methamphetamine hydrochloride, a dangerous drug.<sup>30</sup> Forensic Chemist Calleja then brought the seized drugs to the trial court for the presentation of evidence.<sup>31</sup> The drug paraphernalia, however, were not subjected to qualitative examination.

### Version of the Defense

Bag-ay denied the charges against him. He testified that on February 9, 2015, he was at home preparing to go to Manila,<sup>32</sup> but he received a call from a certain "Bela" regarding the payment of her PHP 5,000.00 debt to him.<sup>33</sup> Bag-ay claimed that Bela was an acquaintance whom he met before in a gambling place in La Trinidad, Benguet.<sup>34</sup> When Bag-ay told Bela that he is going to Manila, she told him to wait because she will pay her.<sup>35</sup>

While waiting for Bela, Bag-ay had a drink at Comiles Restaurant along Marcos Highway in front of Shell gasoline station.<sup>36</sup> At around 10:00 p.m., Bag-ay received a call from Bela, and they agreed to meet at the Shell gasoline station.<sup>37</sup>

Bag-ay thus started walking towards the gasoline station when suddenly, a van stopped in front of him; the passengers forced him at gun point to board the van.<sup>38</sup> He saw Bela seated in front of the van.<sup>39</sup> The van then proceeded to Suello Village and parked in a dark area.<sup>40</sup> There, Bag-ay claimed that he was frisked and his bag was searched, but nothing illegal was found.<sup>41</sup>

From Suello Village, they proceeded to a waiting shed near Grace Baptist Church along Marcos Highway, where the men laid sachets of *shabu* on the floor, which they claimed to be confiscated from Bag-ay.<sup>42</sup> From the

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<sup>27</sup> *Rollo*, p. 12.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Records*, p. 16.

<sup>31</sup> *Rollo*, p. 12.

<sup>32</sup> *Id.*

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

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

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

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

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

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

<sup>42</sup> *Id.* at 32.

church, the group proceeded to a restaurant to buy food, then to a place near Baguio General Hospital, where they consumed their food and stayed until 6:00 a.m. before going to Camp Dangwa.<sup>43</sup>

Bag-ay testified that he no longer saw Bela from the time they left Suello Village as she was transferred to another vehicle.<sup>44</sup> The next time she saw her was inside a detention cell in Camp Dangwa. Bag-ay stated that Bela was charged with Illegal Possession of Dangerous Drugs, and that Bela framed him in order to avoid paying the debt and as a “*palit-ulo*.”<sup>45</sup>

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

In its April 5, 2019 Joint Decision,<sup>46</sup> the RTC convicted Bag-ay of both Illegal Sale of Dangerous Drugs and Illegal Possession of Drug Paraphernalia. It held that Bag-ay, through a legitimate buy-bust operation, was caught *in flagrante delicto* of selling shabu to the poseur-buyer, who positively identified him in open court.<sup>47</sup> Further, the trial court ruled that there was an unbroken chain of custody; the links from the illegal sale up to the presentation in court were properly established.<sup>48</sup>

As to the charge of Illegal Possession of Drug Paraphernalia, Bag-ay was indeed in possession of the items as found through a valid warrantless search incidental to a valid warrantless arrest.<sup>49</sup>

The dispositive portion of the RTC Joint Decision reads:

**WHEREFORE**, judgment is hereby rendered as follows:

1. In Criminal Case No. 36881-R, the court finds accused RUDY BAG-AY y Bogya aka Ruben Mariano y Bogya GUILTY as charged beyond reasonable doubt for selling eight (8) sachets of *methamphetamine hydrochloride* with a combined weight of 1.4978 grams, in violation of Section 5, Article II of RA 9165 otherwise known as [the] Comprehensive Dangerous Drugs Act and is hereby sentenced to suffer the penalty of *life imprisonment* and to pay a fine of P500,000.00 plus costs, and to suffer the accessory penalties under Section 35 thereof.

2. In Criminal Case No. 36882-R the court finds accused accused [sic] RUDY BAG-AY y Bogya aka Ruben Marianoy [sic] Bogya GUILTY as charged beyond reasonable doubt for having in his possession, control and custody gray [sic] pouch labeled Dr. CI: Labo containing one (1) casio electronic calculator; one (1) improvised lamp, one (1) plastic cellophane labeled calypso containing several pieces of transparent plastic sachets, four (4)

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<sup>43</sup> Id.

<sup>44</sup> Id. at 13.

<sup>45</sup> Id.

<sup>46</sup> Id. at 27-48.

<sup>47</sup> Id. at 36-37.

<sup>48</sup> Id. at 41-43.

<sup>49</sup> Id. at 47-48.

pieces improvised plastic tooters; two (2) transparent plastic tubes, and one (1) pair of stainless scissors, paraphernalia [sic] for dangerous drugs, in violation of Section 12, Article II of RA 9165 otherwise known as Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to imprisonment of six (6) months and one (1) day as minimum to four (4) years as maximum and a fine of Ten thousand pesos (P10,000.00, [sic] and to suffer the accessory penalties under Section 35 thereof.

The accused being under detention shall be credited [sic] in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Article 29 of the Revised Penal Code, as amended.

The eight (8) heat-sealed transparent plastic sachets of methamphetamine hydrochloride weighing a total of 1.4978 grams, together with the paraphernalia for dangerous drugs, are forfeited in favor of the government and are hereby ordered [sic] to be turned over to the Philippine Drug Enforcement Agency to be disposed of in accordance with law.

**SO ORDERED.**<sup>50</sup>

Aggrieved, Bag-ay filed a notice of appeal insisting that there were irregularities in the conduct of the buy-bust operation as prior surveillance was not conducted;<sup>51</sup> that there were gaps in the chain of custody and that the agents did not comply with the PDEA's Manual of Procedures on Anti-Drug Operation;<sup>52</sup> and lastly, Bag-ay raised in issue the agents' failure to authenticate the marked money.<sup>53</sup>

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

In its February 19, 2021 Decision,<sup>54</sup> the CA affirmed Bag-ay's conviction. It found that the buy-bust operation is legitimate. In contrast to Bag-ay's claim, prior surveillance is not required; there is no need for the agents to confirm the information given by the CI because he accompanied them during the buy-bust.<sup>55</sup> Further, failure to authenticate the marked money is not fatal to the validity of the operation nor will it affect the case of the prosecution.<sup>56</sup>

The appellate court also ruled that the rules on chain of custody were duly observed; there were no significant gaps in the handling of the seized items, contrary to accused's assertion.<sup>57</sup>

The dispositive portion of the CA Decision reads:

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<sup>50</sup> Id. at 48.

<sup>51</sup> Id. at 16.

<sup>52</sup> Id. at 15-16.

<sup>53</sup> Id. at 16.

<sup>54</sup> Id. at 8-22.

<sup>55</sup> Id. at 16-17.

<sup>56</sup> Id. at 17.

<sup>57</sup> Id. at 19-20.



**WHEREFORE**, the appeal is **DENIED**. The Joint Decision dated 5 April 2019 rendered by the Regional Trial Court, First Judicial Region, Branch 61, Baguio City, in Criminal Case Nos. 36881-R and 36882-R is **AFFIRMED**.

**SO ORDERED.**<sup>58</sup>

Still aggrieved, Bag-ay elevated the case to this Court. Both parties opted to adopt their respective briefs filed with the appellate court.

### Issue

The issue here is whether Bag-ay is guilty beyond reasonable doubt of the offenses charged.

### Our Ruling

The appeal has merit. The Court acquits Bag-ay from both charges.

At the outset, the Court notes that there is a discrepancy in the case numbers stated in the dispositive portion of the April 5, 2019 Joint Decision of the RTC. The trial court interchanged the case numbers of the two charges. Based on the Informations filed and the records of the case, Criminal Case No. 36881-R pertains to the Illegal Possession of Drug Paraphernalia charge, while Criminal Case No. 36882-R pertains to the Illegal Sale of Dangerous Drugs charge.

This discrepancy, however, becomes irrelevant as this Court acquits Bag-ay from both charges.

Now on the merits of the case.

Bag-ay was charged with Illegal Sale of Dangerous Drugs under Sec. 5<sup>59</sup> and Illegal Possession of Drug Paraphernalia under Sec. 12<sup>60</sup> of RA 9165. For

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<sup>58</sup> Id. at 22.

<sup>59</sup> Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

<sup>60</sup> Sec. 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, 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: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

both offenses, the prosecution must sufficiently show that the rule on chain of custody embodied in Sec. 21 of the law, as amended by RA 10640,<sup>61</sup> has been properly observed. The amended Sec. 21 reads:

*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 persons 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.

The provision requires that the inventory and the taking of photographs of the seized items shall be performed in the presence of the accused or counsel together with two other witnesses—an elected public official and a representative from either the National Prosecution Service or the media.

Further, for warrantless seizures, the process shall be done at the place of seizure or if practicable, in the nearest police station or office of the apprehending team. It is worthy to emphasize that for warrantless seizures, the operative phrase in the provision regarding the place is “whichever is practicable.”<sup>62</sup> Thus, police officers indeed have the option to conduct the inventory and taking of photographs in the nearest station, and not on the site, if it is shown that there is justification that:

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<sup>61</sup> 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: July 15, 2014.

<sup>62</sup> *People v. Taglucop*, G.R. No. 243577, March 15, 2022.





1. It is not practicable to conduct the process at the place of seizure;
- or
2. The items seized are threatened by immediate or extreme danger at the place of seizure.<sup>63</sup>

Otherwise, inventory and taking of photographs must be conducted in the place where the seizure was made.<sup>64</sup> *People v. Tagluco*<sup>65</sup> mentioned of some cases where this Court acquitted the persons charged with Illegal Sale and Illegal Possession of Dangerous Drugs by reason of the failure of the prosecution to provide an acceptable explanation to deviate from procedure and conduct the inventory in the nearest police station.<sup>66</sup>

The requirements under Sec. 21 also apply to confiscated drug paraphernalia under a Sec. 12 charge. As provided in the amendment, drug paraphernalia obtained through a warrantless search must likewise be inventoried and photographed in the presence of the required witnesses in the place where the seizure was made, or in the nearest police station upon showing of either of the above justifications.<sup>67</sup>

The instant case suffers infirmities with regard to the compliance with Sec. 21, thus necessitating the acquittal of Bag-ay from both charges.

Here, it was established that the inventory report was prepared in the police station in Baguio City. The RTC and the CA are in unison in finding that the inventory, different from marking, was conducted in the police station and not on site.<sup>68</sup> The affidavits executed by Agents Capuyan (Affidavit of Poseur Buyer), Poking (Affidavit of Arresting Officer), and Baclili (Affidavit of Seizing Officer) uniformly state that after the marking and taking of photographs of the seized items on site:

x x x We then brought the arrested person together with the seized items at Station 5, BCPO where an inventory of the said seized items was conducted as witnessed by Mr. Breves Bulsao of Bombo Radyo and Barangay Kagawad Modesto Bantic of Sto. Rosario;<sup>69</sup>

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<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id.

<sup>66</sup> Id. The Court stated:

In *People v. Tubera* (G.R. No. 216941, June 10, 2019), the prosecution did not even attempt to explain why it was impracticable to conduct the inventory and taking of photographs at the place of seizure, which led the Court to acquit therein accused.

x x x x

The pronouncement in *Lim* was likewise applied in *People v. Salenga* (G.R. No. 239903, September 11, 2019) where the police officers simply gave a flimsy excuse that the crowd was getting bigger at the place of seizure; hence, it was treated by the Court as an invalid reason for them to conduct the inventory at the nearest police station.

<sup>67</sup> *CICL XXX v. People*, G.R. No. 230964, March 2, 2022.

<sup>68</sup> *Rollo*, pp. 12 and 30.

<sup>69</sup> Records, pp. 6 and 9.

Further, the direct examination of Agent Capuyan tells:

Prosecutor Ramsey Wynn Sudaypan (Pros. Sudaypan)

Q: After you marked these items, Mr. Witness, what happened next?

A: We then proceeded to BCPO Station 5, Sir, for the inventory.<sup>70</sup>

x x x x

Q: After the buy bust operation, what happened next?

A: We went to BCPO Station 5 for inventory, Sir.

Q: And was that inventory reduced to writing?

A: Yes, Sir.<sup>71</sup>

Despite these statements, it is apparent that the prosecution did not offer any explanation that it is more practical to conduct the inventory in Baguio City Police Office, Station 5, or that the seized items are threatened by immediate or extreme danger at the place of seizure. In fact, the PDEA agents were able to mark and take photographs of the drugs and paraphernalia at the waiting shed;<sup>72</sup> so why can't they prepare the inventory report there as well? The answer seems to be due to the absence of the required witnesses on site as shown in the photographs. In any event, the prosecution failed to offer any explanation to satisfy the requirements for a valid conduct of inventory in the nearest police station. This lack of explanation also constitutes noncompliance with Sec. 21.

And to reiterate, the requirements under the amended Sec. 21 covers drug paraphernalia. As the drugs and paraphernalia were handled in the same manner, time, and place, the apparent discrepancies in the inventory of the seized drugs are likewise fatal to the compliance with regard to the charge of Illegal Possession of Drug Paraphernalia.

Lastly, the prosecution cannot just rely on the saving clause in Sec. 21. For this saving clause to apply, the prosecution must acknowledge and justify its noncompliance with the required procedure.<sup>73</sup> It must first recognize the lapses, then provide a justifiable ground for noncompliance as well as show that the integrity and evidentiary value of the seized items were preserved.<sup>74</sup> In the instant case, there is no showing of justifiable grounds for noncompliance with the requirements on witnesses and place of marking. The prosecution did not first recognize that there were lapses in the procedure. Then it provided no explanation as to why there were no witnesses during the marking of the seized items; and as already discussed, it did not satisfy the test of practicality in opting to prepare the inventory report in the police

<sup>70</sup> TSN, September 2, 2015, p. 9.

<sup>71</sup> Id. at 11-12.

<sup>72</sup> Records, p. 146.

<sup>73</sup> *People v. Señeres*, 842 Phil. 589, 605 (2018).

<sup>74</sup> *People v. Andrada*, 833 Phil. 999, 1013 (2018).

station rather than on site. The prosecution's failure to recognize the lapses and provide for justifications prove fatal to its case.

Considering the foregoing noncompliance, it is proper for the Court to acquit Bag-ay from both charges. Given this, it is no longer necessary for the Court to delve into the validity of the buy bust operation as raised by Bag-ay.

**WHEREFORE**, the appeal is **GRANTED**. The February 19, 2021 Decision of the Court of Appeals in CA-G.R. CR-HC No. 13021 is **REVERSED** and **SET ASIDE**. Accused-appellant Rudy Bag-ay y Bogya *a.k.a. "Ruben B. Marciano"* is **ACQUITTED** from all charges 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.

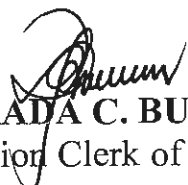
Let a copy of this Resolution be furnished the Director General, Bureau of Corrections, Muntinlupa City for immediate implementation. He is **DIRECTED** to report to this Court the action he has taken within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

The Letter dated May 2, 2022 of CSO4 Cesar T. Grecia, Chief Inmate Documents and Processing Division, Bureau of Corrections, in compliance with the Resolution dated March 14, 2022, informing the Court that they have on file Rudy Bag-ay y Bogya *a.k.a. "Ruben B. Mariano"* received for confinement on November 27, 2018 at the New Bilibid Prison, Muntinlupa City, is **NOTED**.

**SO ORDERED."**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *m n/r*

by:

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

**195-A**

**MAR 16 2023**

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

Court of Appeals (x)  
Manila  
(CA-G.R. CR-HC No. 13021)

The Hon. Presiding Judge  
Regional Trial Court, Branch 61  
2600 Baguio City  
(Crim. Case Nos. 36881-R & 36882-R)

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"Ruben B. Mariano" (x)  
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