



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 233477

- versus

Present:

CARPIO, *J.*, Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., *JJ.*

JOWIE ALLINGAG y TORRES and
ELIZABETH ALLINGAG y
TORRES,

Promulgated:

Accused-Appellants.

30 JUL 2018

X-----X

DECISION

PERALTA, *J.*:

This is an appeal of the Court of Appeals' (CA) Decision¹ dated June 9, 2017 dismissing appellants' appeal and affirming the Decision² dated January 8, 2016 of the Regional Trial Court (RTC), Branch 70, Taguig City convicting appellants Jowie Allingag y Torres and Elizabeth Allingag y Torres of Violation of Sections 5 and 11, Article II, Republic Act (R.A.) No. 9165.

The facts follow.

A confidential informant arrived at the Station Anti-Illegal Drugs-Special Operations Task Group (SAID-SOTG), Taguig City Police Station on December 8, 2011 and reported to Police Officer (PO) 3 Jowel Briones the illegal drug activities of a certain Jowie Allingag and Elizabeth Allingag. As a consequence, team leader Police Senior Inspector Jerry Amindalan made a

¹ Penned by Associate Justice Stephen C. Cruz, with Associate Justices Edwin D. Sorongon and Nina G. Antonio-Valenzuela concurring; *rollo*, pp. 2-21.

² Penned by Presiding Judge Louis P. Acosta; *CA rollo*, pp. 19-27.

plan and called the team that included SPO1 Sanchez, PO2 Antillion, and PO1 Balbin, among others, to conduct a briefing for a buy-bust operation. PO3 Briones was designated as poseur-buyer and PO1 Balbin was his immediate back-up. The team leader then instructed PO2 More to coordinate with the Philippine Drug Enforcement Agency (*PDEA*) and the Southern Police District. PO2 More also prepared the Coordination Form and Pre-Operation Report. PO3 Briones was then given two (2) Five Hundred Peso bills and investigator Bonifacio recorded the same in the police blotter.

The team then proceeded to F. Generao St., Calzada Tipas, Taguig to conduct the buy-bust operation. The team parked their vehicle near the target area and they proceeded on foot. When they reached the place, the confidential informant saw appellants Jowie and Elizabeth and informed the police officers that the latter two were the target persons. The confidential informant approached Jowie and Elizabeth and introduced PO3 Briones as the person who will buy *shabu* for his personal consumption. Jowie then told them that the *shabu* was worth One Thousand Two Hundred Pesos (₱1,200.00) but because the confidential informant was his "*suki*," PO3 Briones was allowed to buy the *shabu* for One Thousand Pesos (₱1,000.00). PO3 Briones then handed the marked money to Jowie and the latter passed the same money to Elizabeth. Elizabeth then told PO3 Briones that she has another sachet of *shabu* and asked him if he still wanted to buy another. PO3 Briones told Elizabeth that he only had One Thousand Pesos (₱1,000.00).

Thereafter, PO3 Briones made the pre-arranged signal by removing his bull cap and PO1 Balbin rushed to arrest appellants Jowie and Elizabeth. PO1 Balbin handcuffed the two and PO3 Briones recovered one (1) plastic sachet of dried marijuana from Jowie and one (1) plastic sachet of *shabu* and the buy-bust money from Elizabeth. Thereafter, PO3 Briones placed his markings "JVB" on the *shabu* subject of the sale and "JVB-2" on the marijuana confiscated from Jowie and "JVB-1" on the *shabu* confiscated from Elizabeth.

A certificate of inventory was then prepared and, thereafter, the team proceeded to the police station for proper turnover and documentation. At the police station, photographs of the arrested suspects, Spot Report, Request for Crime Laboratory of the specimens, Request for Drug Tests and the booking and information sheets were prepared. Thereafter, PO3 Briones and investigator PO3 Bonifacio brought the request and the confiscated items to the crime laboratory for examination.

Police Chief Inspector Jocelyn Belen Julian, Forensic Chemist of the PNP Crime Laboratory, Camp Crame conducted an examination on the confiscated items marked "JVB" and "JVB-1" which tested positive for the presence of methylamphetamine hydrochloride and "JVB-2" which tested positive for marijuana.



Thus, three (3) Informations were filed against the appellants for violation of Sections 5 and 11, Article II of R.A. No. 9165 that read as follows:

Crim. Case No. 17821-D
(against appellants Jowie and Elizabeth)

That on or about the 8th day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, without being authorized by law, to sell or otherwise dispose any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur-buyer, zero point thirteen (0.13) gram of Methylamphetamine Hydrochloride, commonly known as shabu, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.³

Crim. Case No. 17822-D
(against appellant Jowie)

That on or about the 8th day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession of zero point thirty-two (0.32) gram of dried Marijuana fruiting tops, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁴

Crim. Case No. 17823-D
(against appellant Elizabeth)

That on or about the 8th day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession, custody and control of zero point thirteen (0.13) gram of dried Methylamphetamine Hydrochloride, commonly known as shabu, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁵

Upon arraignment, appellants, with the assistance of counsel from the Public Attorney's Office (PAO), entered pleas of "not guilty" on all charges.

Both appellants denied the allegations and claimed that they were victims of frame-up by the police officers.

³ CA rollo, p. 13.

⁴ Id. at 15.

⁵ Id. at 17.

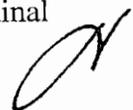


According to appellant Elizabeth, she was celebrating her birthday on December 8, 2011. Around 6 o'clock in the evening, appellant Elizabeth rented a *videoke* and when she returned, she saw several people outside her house and heard that police officers were inside. She immediately went near the house and asked three police officers what the problem was. The police officers asked what her relationship is with appellant Jowie and upon knowing that the latter is her brother, the police officers dragged her inside the house and handcuffed her. Surprised with what happened, and having noticed that the police officers were searching inside the house, she asked the police officers if the latter have a search warrant, but she did not receive any reply from them. Appellant Elizabeth also claims that the police officers did not find anything in the house and when the police officers were about to frisk her, she told them that she will take out her pockets, showing that the same were empty. One (1) of the police officers, however, presented a small plastic sachet containing white powder content and the police officers brought her and appellant Jowie to the municipal hall. Appellant Elizabeth asked the police officers what they have done wrong, but no one answered. Thereat, two (2) plastic sachets, two (2) Five Hundred Peso Bills, and another plastic sachet containing leaves were placed by the police officers on top of the table. She denied that the items were recovered from them.

Appellant Jowie also denied the charges against him and claims that on the date and time of the incident, he was inside his house watching television, when several men arrived and suddenly went inside his house and handcuffed him. He asked them what he did wrong, but they did not reply, instead they searched his house. While searching his house, appellant Elizabeth, his elder sister, arrived and asked for a warrant as they were searching the house. While addressing those questions, the men also handcuffed his sister. Then one of the men took out a plastic containing white powder and they forcibly brought them to the municipal hall. The police officers put on the table a Two Hundred Peso (₱200.00) bill and two (2) plastic sachets containing white powder and one (1) plastic sachet containing dried leaves and they were then told that those items belong to them.

The RTC found appellants guilty beyond reasonable doubt of the offenses charged and sentenced them as follows:

WHEREFORE, premises considered, both accused JOWIE ALLINGAG y TORRES and ELIZABETH ALLINGAG y TORRES are hereby found GUILTY beyond reasonable doubt of selling without any authority 0.13 gram of Methylamphetamine Hydrochloride or "*shabu*," a dangerous drug, in violation of Sec. 5, Art. II of R. A. 9165 and are hereby both sentenced to suffer the penalty of LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) for Criminal Case No. 17821-D.



Under Crim. Case No. 17822-D for possession of 0.32 gram of dried Marijuana fruiting tops a dangerous drug, accused JOWIE ALLINGAG y TORRES is hereby sentenced to suffer the penalty of IMPRISONMENT OF TWELVE (12) YEARS AND ONE DAY TO TWENTY (20) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).

Under Crim. Case No. 17823-D for possession of 0.13 gram of Methylamphetamine Hydrochloride or “*shabu*,” a dangerous drug, accused ELIZABETH ALLINGAG y TORRES is hereby sentenced to suffer the penalty of IMPRISONMENT OF TWELVE (12) YEARS AND ONE [(1)] DAY TO TWENTY (20) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).

Pursuant to Section 21 of Republic Act 9165, the Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA), or any of the PDEA authorized representative is hereby ordered to take charge and to have custody of the sachets of “*shabu*” and marijuana subject matters of these cases, within 72 hours from notice, for proper disposition.

Furnish the PDEA a copy of this Decision for its information and guidance.

SO ORDERED.⁶

According to the RTC, the police officers enjoy the presumption of regularity in the performance of their official functions and that the claim of appellants that they were the subject of a frame-up has no basis. It also ruled that the elements of the crimes charged are present and that the arresting officers complied with the provisions of Section 21 of R.A. No. 9165

The CA affirmed the decision of the RTC *in toto*, thus:

WHEREFORE, the instant appeal is hereby DENIED. The Decision dated January 8, 2016 of the Regional Trial Court of Taguig City, Branch 70, in Criminal Case Nos. 17821-23-D, finding Jowie Allingag y Torres and Elizabeth Allingag y Torres guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, is hereby AFFIRMED *in toto*.

SO ORDERED.⁷

The CA ruled that the prosecution was able to establish the key elements for illegal possession and sale of dangerous drugs and that the bare denials of the appellants cannot prevail over the positive testimonies of the police officers. It also held that non-compliance with Section 21 of R.A. No. 9165 does not automatically render void and invalid the seizure and custody over the seized item, as long as the integrity and the evidentiary value of the same were properly preserved by the apprehending officers.

⁶ *Id.* at 26-27.

⁷ *Rollo*, p. 20.

Hence, the present appeal.

The issues presented in the appeal are the following:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE *CORPUS DELICTI* OF THE CRIME.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN THEIR FAVOR.⁸

Appellants argue that the trial court's reliance on the presumption of regularity in the performance of duty by the police officers is misplaced since the buy-bust team failed to comply with Section 21 of R.A. No. 9165 as there was no representative from the Department of Justice (*DOJ*) when the inventory of the purportedly seized items was conducted. They also claim that the presence of the representative from the media during the inventory of the seized items is doubtful because the representative admitted that, upon arriving at the place of the incident, the inventory was already accomplished and that he merely signed the same because the police officers told him to do so. It is also pointed out that the testimonies of the *barangay kagawad* and the forensic chemist were not presented in court.

The appeal is meritorious.

Under Section 5, Article II of R. A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.⁹

⁸ CA rollo, pp. 105-106.

⁹ *People v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.



In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."¹⁰

Also, under Section 11, Article II of R. A. No. 9165 on illegal possession of dangerous drugs, the following must be proven before an accused can be convicted:

[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.¹¹

In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.¹² In *People v. Gatlabayan*,¹³ the Court held that "it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect."¹⁴ Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."¹⁵

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

(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.

Supplementing the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 699 Phil. 240, 252 (2011).

¹⁴ *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

¹⁵ See *People v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.



(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(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 her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."¹⁶ Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected *barangay* officials themselves were involved in the punishable acts

¹⁶Senate Journal. Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

apprehended."¹⁷ In addition, "[t]he requirement that inventory is required to be done in the police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."¹⁸

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."¹⁹ In his Co-sponsorship Speech, he noted:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

x x x

Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted.

¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.* at 349.

Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.²⁰

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, this Court opined in *People v. Miranda*:²¹

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.²²

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee “against planting of evidence and frame up,” *i.e.*, they are “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”²³ Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated

²⁰ *Id.* at 349-350.

²¹ G.R. No. 229671, January 31, 2018. (Citations omitted)

²² See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R. No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017; *People v. Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017; *People v. Ceralde*, G.R. No. 228894, August 7, 2017; and *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

²³ *People v. Sagana*, G.R. No. 208471, August 2, 2017.



and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment.

In this case, the absence of a representative from the DOJ during the inventory of the seized items was not justifiably explained by the prosecution. A review of the transcript of stenographic notes does not yield any testimony from the arresting officers as to the reason why there was no representative from the DOJ. In his testimony, PO3 Briones merely confirmed the presence of a *barangay kagawad* and a representative from the media during the inventory of the seized items, thus:

Q You mentioned the three (3) plastic sachets with the markings. I'm giving you these three plastic sachets, can you please identify which among those plastic sachets is the one subject of sale confiscated from Jowie?

A This one, [M]a'am,

PROSEC FABELLA

Your Honor, the witness identified as the one subject of sale from Jowie Allingag the plastic sachet with markings JVB, which has been marked as Exhibit "O".

Q How about the other two plastic sachets?

A This is the plastic sachet with markings JVB-1 confiscated from the possession of Elizabeth Allingag, [M]a'am.

PROSEC FABELLA

Your Honor, the witness identified this specimen with marking Exhibit "O-1".

Q How about the plastic sachet of marijuana?

A This is the sachet with markings "JVB-2" in the possession of Jowie Allingag, [M]a'am.

PROSEC FABELLA

Your Honor, the witness identified this specimen which was marked as Exhibit "O-2".

Q Where did you put these markings, [M]r. [W]itness?

A At the place where they were arrested, [M]a'am.

Q Who were present when you put these markings?

A The representative of the media, Peter Corpus of Remate, [M]a'am.

Q And what happened after you put markings on those specimen?

A I also prepared the certificate of inventory, [M]a'am.

Q If that certificate of inventory will be shown to you, will you be able to identify it?

A Yes, [M]a'am.



Q I'm showing to you this document, can you please go over this?

A Yes, [M]a'am this is the same document and this is the signature of the media representative of Remate and a Kagawad, a certain Vicente Magdaraog.

Q How did you know that these are their signatures?

A I was there and I saw them signed their signatures, [M]a'am.²⁴

In *People v. Angelita Reyes, et al.*,²⁵ this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

x x x It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125²⁶ of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above-ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*,²⁷ thus:

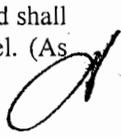
The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Code could prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers

²⁴ TSN, November 26, 2012, pp. 15-17.

²⁵ G.R. No. 219953, April 23, 2018.

²⁶ Article 125. *Delay in the delivery of detained persons to the proper judicial authorities.* - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

²⁷ G.R. No. 224290, June 11, 2018.



from obtaining the presence of the required witnesses even before the offenders could escape.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.²⁸ It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.²⁹ Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the Rules on Evidence. 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 item.³⁰ A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.³¹

There being no justifiable reason for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized items has not been established beyond reasonable doubt. Thus, this Court finds it appropriate to acquit the appellants in this case.

WHEREFORE, premises considered, the Decision dated June 9, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08043 dismissing appellants' appeal and affirming the Decision dated January 8, 2016 of the Regional Trial Court, Branch 70, Taguig City in Criminal Case Nos. 17821-23-D is **REVERSED AND SET ASIDE**. Appellants Jowie Allingag y Torres and Elizabeth Allingag y Torres are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let copies of this Decision be furnished to the Directors of the Bureau of Corrections and the Correctional Institution for Women, for immediate implementation. Said Directors are **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action they have taken.

²⁸ See *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

²⁹ See *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Jugo*, G.R. No. 231792, January 29, 2018.

³⁰ *People v. Saragena*, G.R. No. 210677, August 23, 2017.

³¹ See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017; *People v. Saragena*, G.R. No. 210677, August 23, 2017; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Sagana*, G.R. No. 208471, August 2, 2017; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19.



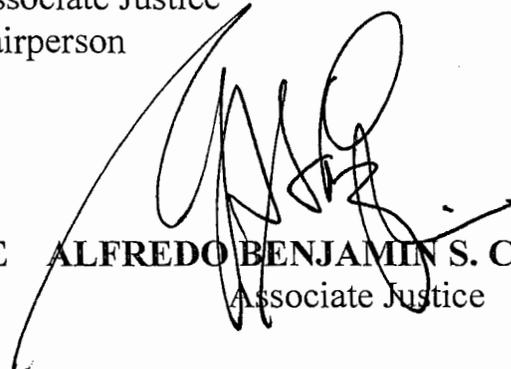
SO ORDERED.


DIOSDADO M. PERALTA
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Senior Associate Justice
 Chairperson


ESTELA M. PERLAS BERNABE
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


ANDRES B. REYES, JR.
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
 Senior Associate Justice
 (Per Section 12, Republic Act
 No. 296, The Judiciary Act of
 1948, as amended)