



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 229833

Present:

- versus -

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

WILLIAM CEPEDA y DULTRA*
and **LOREN DY y SERO,**
Accused,

Promulgated:

LOREN DY y SERO,
Accused-Appellant.

29 JUL 2019

x-----*Atty. Cabalag*-----x

DECISION

CAGUIOA, J.:

*"[F]or the law holds, that it is better that ten guilty persons escape, than that one innocent suffer."*¹

The Case

Before the Court is an appeal² under Section 13(c), Rule 124 of the Rules of Court from the Decision³ dated May 3, 2016 (CA Decision) of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01318-MIN. The CA Decision affirmed the Judgment⁴ promulgated on July 24, 2014 rendered by the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, Branch 25 (RTC) in Criminal Case Nos. 2011-904 and 2011-905, which found herein accused-appellant Loren Dy y Sero (Dy) guilty with accused William Cepeda y Dultra (Cepeda) (collectively, accused) of violation of Section 5, Article II

* Also spelled as "Dultura" and "Dultara" in some parts of the records.

¹ Sir William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND, 9th ed., book 4, chapter 27, p. 358 (1783. reprinted 1978).

² *Rollo*, pp. 14-16.

³ *Id.* at 4-13. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Maria Filomena D. Singh and Perpetua T. Atal-Paño concurring.

⁴ CA *rollo*, pp. 32-43. Penned by Presiding Judge Arthur L. Abundiente.

of Republic Act No. (RA) 9165,⁵ otherwise known as the *Dangerous Drugs Act of 2002*, as amended.

The Facts

Dy and Cepeda were jointly charged with violation of Section 5 of RA 9165 (Criminal Case No. 2011-905), while Cepeda alone was charged with violation of Section 11 of the said law (Criminal Case No. 2011-904) before the RTC. The Informations,⁶ which stemmed from the same incident, read in part:

[Criminal Case No. 2011-904]

That on September 15, 2011, at around 9:00 in the evening, more or less, at Barangay 26, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, and without being authorized by law to possess or use any dangerous drug, did then and there willfully, unlawfully, criminally and knowingly have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing white crystalline substance of methamphetamine hydrochloride, locally known as shabu, a dangerous drug, weighing 0.08 gram, accused well-knowing that what was recovered from his possession and/or control is a dangerous drug, that after screening and confirmatory tests conducted by the Philippine National Police (PNP) Regional Crime Laboratory, Office-10, Camp Evangelista, Patag, Cagayan de Oro City, of the recovered item from accused's possession and control, the same was found positive of the presence of Methamphetamine Hydrochloride (shabu), a dangerous drug.

Contrary to and in violation of Section 11, Article 2, of R.A. 9165.⁷

[Criminal Case No. 2011-905]

That on September 15, 2011, at around 9:00 in the evening, more or less, at Barangay 26, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping each other, without being authorized by law to sell, deliver, and give away to another, any dangerous [drug], did then and there willfully, unlawfully, and criminally sell to a confidential informant of the Philippine Drug Enforcement Agency, Region 10, Cagayan de Oro City who acted as a poseur-buyer, one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance of methamphetamine hydrochloride, locally known as shabu, a dangerous drug, with a net weight of 0.04 gram, in consideration of Php 500.00, which after a confirmatory test conducted by the PNP Crime Laboratory, was found positive of the presence of methamphetamine hydrochloride, both accused knowing the same to be a dangerous drug.

Contrary to the afore-cited law.⁸

⁵ 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 (2002).

⁶ Records (Crim. Case No. 2011-904), p. 4; records (Crim. Case No. 2011-905), p. 3.

⁷ Id.

⁸ Records (Crim. Case No. 2011-905), p. 3.



When arraigned, both Dy and Cepeda entered a plea of “not guilty.”⁹ Trial on the merits ensued.

The factual antecedents, as gathered from the records, are as follows:

On the evidence of the fact of arrest and elements of the offenses charged, the prosecution presented IO3 Rubietania Aguilar (**Aguilar for brevity**), IO2 Vincent Cecil Orcales (**Orcales for brevity**), and IAI Rodolfo dela Cerna (**dela Cerna for brevity**). Their testimonies showed that on September 5, 2011 at about 6:00 o'clock in the evening[a] female confidential informant (**CI for brevity**) “handled” by dela Cerna, came to the PDEA office and gave an information that an “**alias Bebeng**” (or **hereinafter Dy**) is engaged in selling illegal drugs. Dela Cerna already learned from other reports about the drug activities of Dy and x x x [Cepeda] from other PDEA agents even before his own asset gave such information to him.

Dela Cerna relayed the information he received to their Regional Director who then instructed dela Cerna to form and lead a team for the conduct of a buy[-]bust operation. Orcales was designated as the poseur[-]buyer and Aguilar as the arresting officer. The necessary documents were then prepared x x x. A camera was also prepared. The buy[-]bust money was given to Orcales before the team composed of about eight (8) members including the CI, left the PDEA office at about 9:00 o'clock in the evening to proceed to the area of the operation using their unmarked Toyota Innova vehicle.

Upon nearing the target area which is somewhere along Osmena¹⁰ Extension and just near Mindanao University of Science and Technology (MUST), Orcales and the CI alighted and walked their way to the house of their target. The rest of the team stayed in the vehicle to wait for the pre-arranged signal which is a missed call to be made by Orcales. The house of their target is not visible from the spot where the vehicle was parked.

The CI led Orcales to a wooden two-storey [house] where the CI then called out “Bebeng” (Dy). Dy appeared at the small terrace on the second floor just right outside the main door, and invited the CI and Orcales to come upstairs. The CI appeared to be a friend of “Bebeng”, and Orcales just stayed behind the CI when the two of them went upstairs. Upon reaching Dy, the CI introduced Orcales to Dy as a friend who wanted to buy shabu worth Php500.00. She then called out “**Loloy**” (or **hereinafter Cepeda**) who came out from the end room of the house.

When Cepeda reached Dy, he got a sachet of shabu from his left pocket and handed it to Orcales who extended his hand to receive the sachet. The CI and Dy continued their casual talk for a little more time after which the CI and Orcales went down the house. Upon reaching the ground, Orcales made a missed call to Aguilar. When Aguilar received the missed call, she informed the rest of [the] team, and they all rushed to the house of Bebeng taking them about three minutes to reach the area which was about 150 meters away from the place where they parked the vehicle. The way to the house of Dy and Cepeda was a narrow pathway on the side of the big

⁹ CA rollo, p. 33.

¹⁰ Also appears as “Osmeña” in some parts of the records.

drainage beside MUST, and one has to be careful or be in danger of falling in the canal.

They met Orcales along the way upon nearing the house of Bebeng and Orcales joined the team in going to the house of Bebeng but he (Orcales) instructed his CI to hide herself. The agents with Cardona leading the way, went straight to the second floor where the main entrance door was already slightly open. Upon entering the house, they immediately saw Dy and Cepeda, and the agents then introduced themselves. Orcales himself pointed to the team “Bebeng” (Dy) and “Loloy” (Cepeda). Dy had no reaction, but Cepeda ran inside the room. The agents immediately went after Cepeda and upon entering the room, they saw him throwing something but they could not locate the spot where it landed because it was nighttime and the room was dimly lighted. Dela Cerna and two other agents exerted efforts to find the object which Cepeda may have thrown with the aid of a flashlight attached to the rifle of dela Cerna, but they failed to find anything.

They arrested Cepeda and searched his body and they discovered from his right pocket the buy[-]bust money and in the left pocket another sachet of shabu. They also seized one (1) lighter, improvised needle, some pieces of aluminum foils (*sic*) which they found on top of a table in the sala. The said items were then gathered in one cellophane which was marked by Aguilar “RLA”. Orcales marked the sachet he bought “BB-VCO” and turned over the said sachet to Aguilar. Aguilar also marked with her initials the sachet recovered from the pocket of Cepeda.

Before conducting the inventory, they called for the presence of a barangay kagawad and a mediaman from Bombo Radyo, and upon their arrival, Aguilar conducted an Inventory at the crime scene of x x x the seized items witnessed by a barangay kagawad and media personality while pictures were being taken. x x x¹¹

Meanwhile, the defense presented a counterstatement of facts, which was summarized in the following manner:

Accused William Cepeda and Loren Dy, who claimed to be husband and wife, both took the witness stand to deny the charges in these two cases. According to them, on September 5, 2011 at around 8:00 o'clock in the evening, they were in their house at Osmena Extension, Cagayan de Oro City. The house they were living (*sic*) is a two-storey house, but they are occupying only the second floor. At that time, Cepeda and Dy were already lying down in their bedroom while watching television. Also inside the room was their daughter-in-law Elda Ubanan, and the latter's baby, while their other children already entered their respective rooms.

While watching television, they felt the house shaking and they heard thudding sounds and they sensed that there were many people going upstairs. Cepeda peeped through the window to find out what was going on outside, and he saw somebody (they came to know later as dela Cerna) entering the house through the window of the room of his son Werlan Cepeda and the latter's wife Jenny Sumagang Cepeda, who were already lying down. Cepeda also saw armed persons kicking the door of their house uttering in a loud voice, “PDEA ni, raid ni” (We are PDEA agents, this is a raid). Cepeda followed by Dy went to the bedroom of their son and upon

¹¹ CA rollo, pp. 34-36.

entering the room, Cepeda saw his son already handcuffed and ordered not to move, while the persons who were kicking the main door successfully destroyed the lock of the door and entered the house.

When the armed persons, some in civilian clothes and others in clothes with PDEA print, were already inside, and they appeared to be looking for someone. They asked Cepeda if anyone was occupying the second floor, and Cepeda answered only his family. The man asked Cepeda his name and the latter answered he is "Loloy", but the man poked his gun at Cepeda and ordered him to lie face down on the floor. Cepeda asked what offense he had committed, and also demanded to see a search warrant, but a lady (accused came to know later as Aguilar) in the company of the group berated him saying, "keep quiet or else I will empty the bullets of my gun in your body". Upon hearing the threat, Cepeda stopped complaining, and he was then handcuffed at his back. Cepeda was bodily searched and was made to remove his pants.

The armed persons then searched all the rooms in the house for about two hours from 9:00 o'clock in the evening to 11:00 o'clock in the evening, by themselves without allowing any of the occupants of the house to witness the search. Cepeda did not know if they recovered any items during the search because they never showed anything to him. When the armed persons came out of the rooms, Cepeda noticed that they were taking pictures but he was not aware what they were photographing because Cepeda was all the time lying face down on the floor handcuffed. They waited for the barangay kagawad who finally arrived at past 11:00 o'clock in the evening, Kagawad Alberto Adecera together with Barangay Tanod Delos Santos. Cepeda overheard the kagawad saying, "so the raid was over", and a piece of paper was handed by Aguilar to [K]agawad Adecera and Tanod delos Santos for them to sign. Kagawad Adecera and x x x Tanod delos Santos were reluctant to sign x x x because according to them they were not present during the incident, but Aguilar prevailed upon them to just sign the piece of paper. After the signing, Cepeda and Dy were brought to the PDEA office. At the office, Cepeda pleaded that he be submitted for a drug test, but his plea was ignored.

When the barangay officials arrived, Werlan Cepeda tried to plead with them as to why he (Werlan) was also being handcuffed, but dela Cerna pulled Werlan away and brought him downstairs. Werlan was being talked out (*sic*) by Dela Cerna to admit that they were selling shabu so that he would be released, but Werlan was steadfast that they were not selling shabu. Before the PDEA left together with the two accused, Werlan was released but was warned that they will just bring their parents (accused) first and will just come back for him (Werlan), as they (PDEA) are not yet finished.

Cepeda and Dy came to know the names of some of the persons who forcibly entered [their] house to be Aguilar, dela Cerna, and Orcales, when the said persons took the witness stand. They claimed that the testimonies [of] the prosecution witnesses relative (*sic*) to a woman who is familiar with Dy and to which Dy had a conversation at about 9:00 o'clock in the evening of September 5, 2011 is a lie, as no such woman talked to Dy during the time mentioned. Cepeda saw Orcales for the first time only when Orcales took the witness (*sic*) to testify in these cases. When the PDEA entered the house, Dy was washing clothes. [Cepeda] was handcuffed and made to lie face down on the floor while Dy was also handcuffed and made to sit on the

bed crying. Cepeda was bodily searched for three times, the first was immediately after the PDEA entered the house, the second was when he was lying face down on the floor inside their bedroom, and the third was when they came back to his (Cepeda) room after their search in the other rooms. Dy was also searched but nothing was found from her body.

The only items they discovered was the income of Cepeda from his driving consisting of P1.00, P5.00 and P10.00, and the latter's license, and there was not even a P100.00 bill as his income as motorela driver do (*sic*) not even reach Php500.00 a day. He was not selling shabu because he had no shabu. His family is being helped financially by his sister-in-law in Australia who is sending them Php3,000.00 to Php3,500.00 a month. The motorela he was driving was given to him, and he had to gather and budget the daily income, and appropriate it only every Sunday. He pays the electric and water bills, and the rest of the motorela earning is sufficient for them to survive a simple living.

The testimony of Aguilar that the P500.00 buy[-]bust money and a sachet of shabu were recovered from his pocket was a lie. The testimony of Orcales that Cepeda is selling shabu is also a lie. As to the reason why the PDEA agents would arrest them, he could recall a previous incident where their neighbor was arrested and the neighbor got mad at them (Cepeda) because they suspected his (Cepeda) son was the one who caused the arrest. The neighbor shouted at them (Cepeda) saying that there will be a time that all of them will also be arrested. Cepeda revealed that the said neighbor had a relative working with the PDEA, which they discovered at the time Cepeda and Dy were already at the PDEA office after their arrest in this case. A woman thereat whom he does not know revealed to them that the Masibas' are her relatives.

The testimonies of both accused were corroborated by Jenny Sumagang Cepeda, Elda Ubanan, and Werlan Cepeda.¹²

Ruling of the RTC

In the Judgment promulgated on July 24, 2014, the RTC found Dy and Cepeda guilty beyond reasonable doubt of violation of Sections 5 and 11, respectively, Article II, RA 9165:

WHEREFORE, premises considered, this Court hereby finds that:

- 1. In Criminal Case No. 2011-904, accused WILLIAM CEPEDA y DULTURA is GUILTY beyond reasonable doubt of the crime defined and penalized under Section 11, Article II of R.A. 9165, and hereby imposes the penalty of imprisonment ranging from Twelve [12] years and one [1] day to Thirteen [13] years, and to pay a Fine in the amount of P300,000.00 without subsidiary imprisonment in case of non-payment of Fine;**
- 2. In Criminal Case No. 2011-905, accused WILLIAM CEPEDA y DULTURA and LOREN DY y SERO are**

¹² Id. at 36-38.



GUILTY beyond reasonable doubt of the crime defined and penalized under Section 5, Article II of R.A. 9165, and hereby imposes the penalty of LIFE imprisonment and for each to pay a Fine in the amount of P500,000.00 without subsidiary imprisonment in case of non-payment of Fine;

The sachets of shabu are hereby confiscated to be destroyed in the manner provided for by law.

SO ORDERED.¹³ (Emphasis in the original)

The RTC favored the testimony of the prosecution witnesses as it found no ill motive on their part to impute such crimes against Dy and Cepeda if they were not truly guilty.¹⁴ As to the non-compliance with Section 21, RA 9165, the RTC found that there was substantial compliance with the requirements of the law and that the buy-bust team was nevertheless able to preserve the integrity and probative value of the seized items.¹⁵

Insisting on their innocence, Dy and Cepeda jointly appealed to the CA.

Ruling of the CA

In the CA Decision, the CA affirmed the RTC Judgment *in toto*, as follows:

FOR THESE REASONS, the consolidated Judgment in Criminal Case Nos. 2011-904 and 2011-905 appealed from is AFFIRMED *in toto*.

SO ORDERED.¹⁶

In a Motion¹⁷ dated May 29, 2016, the counsel of Dy and Cepeda withdrew his representation. On July 4, 2016, the Public Attorney's Office filed an Entry of Appearance with Notice of Appeal,¹⁸ informing the CA of Dy's intention to pursue an appeal with the Court. Cepeda, however, no longer appealed his conviction.

Hence, this appeal.

Issue

Whether Dy is guilty beyond reasonable doubt for the crime charged.

¹³ Id. at 42-43.

¹⁴ See id. at 41-42.

¹⁵ Id. at 42.

¹⁶ *Rollo*, p. 12.

¹⁷ *CA rollo*, pp. 83-84. Denominated as "Motion to Withdraw as Counsel."

¹⁸ Id. at 86-88.



The Court's Ruling

The appeal is meritorious.

The evidence is quite compelling. It bears stressing that the ultimate end of quelling the drug war must, without exception, be achieved within the limits of our laws.

Firstly, the mandatory requirements of Section 21 of RA 9165 were not faithfully complied with. Case law is firm in that the procedure enshrined in Section 21 is a matter of substantive law and cannot be ignored at the whim of law enforcement agents.¹⁹

Secondly, the prosecution did not present justifiable grounds for such non-compliance. Notwithstanding the clear import of the records, the prosecution, despite the opportunity to do so, failed to explain the reason behind the lapses in procedure. Thus, given the unjustified breaches of Section 21, there arises reasonable doubt as to the integrity and evidentiary value of the *corpus delicti*.²⁰

In the same vein, there being merit in the appeal, the Court, in the interest of substantive justice, finds the need to revisit the conviction of Cepeda despite his failure to perfect an appeal before the Court.

Non-observance of the procedure under Section 21 of RA 9165; failure to establish justifiable grounds

Dangerous drugs cases are unique. The fungible nature of the *corpus delicti* in such cases requires the adoption of special rules in order to ensure moral certainty in the conviction of the accused. In this regard, the law, specifically through Section 21²¹ of RA 9165, mandates the following procedure in the seizure, custody, and disposition of dangerous drugs:

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:

¹⁹ See *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

²⁰ See *People v. Alagarme*, 754 Phil. 449, 461 (2015); see also *People v. Sumili*, 753 Phil. 342, 350 & 352 (2015).

²¹ Section 21 of RA 9165 was amended by RA 10640, 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'." R.A. 10640, which imposed less stringent requirements in the procedure under Section 21, was approved only on July 15, 2014.



(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[.]** (Emphasis supplied)

Meanwhile, the Implementing Rules and Regulations (IRR) of RA 9165 provides additional custody requirements and likewise added a “saving clause” in case of non-compliance with such requirements:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (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[.]**(Emphasis supplied)

In the cited provision, the phrase “immediately after seizure and confiscation” has been held by the Court to mean that the physical inventory and photographing of the seized items should be done immediately after, or at the place of apprehension; only if this is not practicable does the IRR authorize the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team.²²

²² *People v. Musor*, G.R. No. 231843, November 7, 2018, pp. 7, 10.



Significantly, **the rule is not the same with respect to the three (3) witnesses specified in Section 21, who are all required to be present at the time or near the place of apprehension.**²³ Their presence at the earliest point of contact with the *corpus delicti* is indispensable in order to foreclose — or at the very least, minimize — the possibility of abuse or planting of evidence.²⁴ Only when there are disinterested persons present can the courts be certain that the operation conducted was insulated from impropriety.

It therefore becomes imperative that all police officers strictly comply with the requirements laid down in Section 21 of RA 9165 and its IRR.²⁵ In case of any deviation with the mandatory procedure, however, a conviction may still be secured if the following requisites are established by the prosecution: (1) the existence of “justifiable grounds;” **and** (2) that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.²⁶ Thus, once it becomes evident that lapses in procedure occurred, the prosecution bears the onus to recognize such lapses and accordingly justify the same. **Without such justification, there would be no occasion to apply the saving mechanism.**²⁷

This case failed to demonstrate such a justification.

The Court, at first blush, takes exceptional note of the gaping holes in the records with respect to the presence and extent of participation of the witnesses in the buy-bust operation.

An excerpt from the direct examination of IO2 Vincent C. Orcales (IO2 Orcales) reveals that not all the witnesses required under Section 21 were present at the time or at least near the place of apprehension:

Q What happened next?

A After that, he handed the shabu and so I extended my hand and got the shabu.

Q And then, what happened next?

A After that, they had a little casual talk and then I puffed (*sic*) the CI to go down and so we went out.

Q What happened next?

A I immediately made a miss (*sic*) call.

Q What happened next?

A After that, I met all the rest of the team approaching already (*sic*).

Q And then, what happened next?

A They rushed up to the house and they arrested the suspect.

²³ Id. at 10.

²⁴ Id.

²⁵ *People v. Cayas*, 789 Phil. 70 (2016); *People v. Havana*, 776 Phil. 462 (2016).

²⁶ RA 9165, Sec. 21(1).

²⁷ See *People v. Luna*, G.R. No. 219164, March 21, 2018, p. 10.

- Q Who arrested the suspect?
A Rubietania Aguilar and the rest of the team.
- Q What did they do to the two suspects?
A I was there downstairs. After that, I think Agent Aguilar all did that (*sic*).
- Q Why you (*sic*) did not help in arresting the suspects?
A They were already having their designations, Sir.
- Q What happened to the sachet of shabu?
A I turned it over to Aguilar.
- Q Who gave you the sachet of shabu?
A It was William Cepeda.
- Q How did he give it?
A He handed it to me, Sir.
- Q And what happened at the house?
A **After that one, the rest of the team and Agent Aguilar conducted the inventory.**
- Q You were present?
A Yes, Sir. When I turned over it (*sic*) to Agent Aguilar.
- Q Where did she conduct the inventory?
A At the crime scene.
- Q What happened during the inventory?
A **It was also witnessed by a Barangay Kagawad of that Barangay.**
- Q **What happened during the inventory?**
A **We put it in the inventory sheet.**²⁸ (Emphasis supplied)

Such fact was likewise confirmed during the cross-examination of IA1 Rodolfo Dela Cerna (IA1 Dela Cerna), where, unlike the testimony of IO2 Orcales, it was claimed that a representative from the media witnessed the operation in addition to a Barangay Kagawad:

- Q Who are the witnesses?
A It was a Barangay Kagawad and the media, I forgot the name, it's in the Inventory, Sir.
- Q How about the media man?
A It was from Bombo Radio and the (*sic*) Kagawad Adecer from Barangay 26, that's what I remember, Sir.²⁹

The foregoing testimonies are completely silent with respect to the presence of a representative of the Department of Justice, as required under

²⁸ TSN, May 21, 2012, pp. 9-10.

²⁹ TSN, June 4, 2012, p. 29.



the law, and neither was there an attempt to explain why there was a failure to secure such witness. Instead, what surfaces is the fact that the witnesses were summoned only *after the fact*; that it was only after the actual buy-bust and subsequent seizure of the items that the witnesses were called.

On this note, the Court draws attention to the testimony of Dy, wherein she clarified that the witnesses, whose insulating presence is required by law to exist at the time of apprehension, had arrived only **two (2) hours after** the buy-bust operation itself:

Q And, what else did they do and tell you after they put those items on the table, what happened next?

A They were just conversing Sir and they keep on walking to and fro as if they were waiting for someone.

Q Who were they waiting for?

A The lady agent said that the barangay kagawad is too long (*sic*) to arrive.

Q Did the barangay kagawad arrive at that time?

A The barangay kagawad arrived at about 11:00 o'clock, Sir.

Q What 11:00 o'clock in the?

A In the evening, Sir.

Q And, who were with the kagawad, if there was any[?]

A Only the two of them Sir, Adecer and Celso delos Santos.

Q When they arrived what did they do?

A They asked me, "What is this Bing?", and I answered, "I don't know kagawad what they are doing.", and they immediately proceeded to the table, Sir.

Q What did they do on (*sic*) the table?

A They let them see those items on the table, Sir.

Q Who showed to them the items on the table?

A The PDEA agents, Sir.

Q **So, I want to make it clear, which happened first, the arrival of the kagawad and a certain Celso or the entering of rooms in your house by the PDEA, which happened first?**

A **They entered the rooms first, Sir.**

Q **More or less what time was that when they entered the rooms?**

A **More or less 9:00 o'clock, Sir.**

Q **And the kagawad arrived, you said around 11:00 o'clock?**

A **Yes, Sir.**

Q After that, what happened?

A They brought us to their office, Sir.



- Q You said earlier that you recognized them, the PDEA agent, during that time, and you knew their names when they were in court, am I correct?
- A Yes, Sir.³⁰ (Emphasis supplied)

Cepeda, in his testimony, confirmed Dy's narration of events and further revealed that the witnesses initially refused to sign the inventory as they were summoned too late:

- Q Okay. Let's go back to the time they entered your rooms; In your estimate, how many minutes did it take them from the time they entered your rooms to finish the search?

A It took them too long because they entered the room at 9:00 o'clock in the evening and finished the search at 11:00 o'clock in the evening.

- Q When they got out, was there any result they presented to you?

A None, Sir.

- Q What did they do after they got out?

A I noticed that there were pictures (*sic*) taking while I was still lying on my belly handcuffed at my back.

- Q What were the things that they were trying to take pictures (*sic*)?

A I do not know because I did not see.

- Q **Alright. After that, what happened?**

A **They waited for the Barangay Kagawad.**

- Q **How did you know that they were waiting for the Barangay Kagawad?**

A **I can hear them saying that the Barangay Kagawad will arrive.**

- Q **Did the Barangay Kagawad arrive?**

A **Yes, Sir. But, it was past 11:00 o'clock in the evening.**

- Q Do you know who was that Barangay Kagawad who arrived?

A I know.

- Q Who?

A Barangay Kagawad Alberto Adecer and Barangay Tanod Delos Santos.

- Q That means there were two (2) barangay officials who arrived?

A Yes, Sir.

- Q **What did they do when they arrived?**

A **I just overheard the Barangay Kagawad said: "So, the raid was over."**

- Q Then, what else did the PDEA Agents do in relation to the words of the Barangay Kagawad?

A They handed a piece of paper for them to sign.

³⁰ TSN, May 28, 2013, pp. 9-10.

- Q Who handed a piece of paper to them?
A The PDEA Agents.
- Q And, can you recognize that PDEA Agent who handed a piece of paper to the Barangay Kagawad?
A Ma'am Aguilar.
- Q **What did the Barangay Kagawad do to the paper handed to them?**
A **They refused to sign that paper because according to them they were not present during the incident.**³¹ (Emphasis supplied)

Significantly, the Inventory of Seized Items/Confiscated Non-Drugs³² dated September 5, 2011, forming part of the records, is more corroborative of the defense's version of events.

Firstly, nowhere does it indicate the name of the alleged media representative except for the name "Norman Jabagat."³³ There is no designation whatsoever of who Norman Jabagat is or what office or organization he represents, and neither was his name mentioned in the testimony of the prosecution witnesses. Secondly, in one of the spaces where the witnesses are required to affix their signature over their printed name, there is written the phrase "REFUSED TO SIGN," which unquestionably corroborates the uniform testimonies of herein accused.³⁴

The sequence of events may therefore be summarized as follows: (i) based on the prosecution's evidence, only two (2) people from the buy-bust team were present in the house of Dy and Cepeda during the alleged sale — IO2 Orcales and his purported confidential informant;³⁵ (ii) the way to the said house was through a narrow pathway on the side of a big drainage beside a canal;³⁶ (iii) the house was not visible from where the rest of the team was positioned, and it takes about three (3) minutes to reach the house by foot;³⁷ (iv) after the alleged sale, the rest of the buy-bust team, consisting entirely of police officers, rushed to the house after receiving a "missed call" from IO2 Orcales;³⁸ (v) the buy-bust team then conducted a thorough search on the persons of Dy and Cepeda and likewise searched their house, yielding another sachet of *shabu* and other paraphernalia;³⁹ (vi) *after* the search and seizure, the buy-bust team then called for witnesses, allegedly a barangay kagawad and a media representative from *Bombo Radyo*, but only Kagawad Alberto Adecer and a certain Norman Jabagat arrived;⁴⁰ (vii) upon their arrival two (2)

³¹ TSN, June 4, 2013, pp. 6-8.

³² Records (Crim. Case No. 2011-905), p. 22.

³³ Id. "Jabagat" also appears as "Habagat" in some parts of the records.

³⁴ Id.

³⁵ See *CA rollo*, p. 35.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id. at 36.

⁴⁰ Id. at 36, 41.



hours later, the buy-bust team proceeded to conduct an inventory and take photographs at the scene;⁴¹ (viii) both witnesses never testified before the RTC despite several attempts to secure their attendance.⁴²

Further, as extensively discussed above, the prosecution dismally failed to discharge its burden of establishing justifiable grounds in light of the lapses in procedure. Hence, there being no justifiable grounds established, there is no more occasion to determine compliance with the second prong of the saving clause, *i.e.*, the preservation of the integrity and evidentiary value of the *corpus delicti*.

Thus, to the mind of the Court, the foregoing confluence of circumstances, when taken in their entirety, inevitably produces reasonable doubt on the integrity of the *corpus delicti*. An acquittal must therefore follow.

*Acquittal of accused-appellant Dy
beneficial to Cepeda*

The Court likewise acquits Cepeda, notwithstanding his failure to perfect an appeal herein.

Recently, in *Fuentes v. People*⁴³ (*Fuentes*), the Court, following its acquittal of the accused-appellant therein from a charge of violation of RA 9165, likewise acquitted the accused-appellant's co-accused who had failed to appeal from the judgment of conviction rendered by the CA:

As a final note, it must be pointed out that **although petitioner's co-accused, Calotes, no longer joined in filing the instant petition, the Court nevertheless deems it proper to likewise acquit him of the crime charged.** This is because the criminal case against Calotes arose from the same set of facts as the case against petitioner and that such acquittal is definitely favorable and beneficial to him. Section 11 (a), Rule 122 of the Revised Rules on Criminal Procedure states that:

Section 11. *Effect of appeal by any of several accused.* —

(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.** (Emphasis supplied)

• **WHEREFORE**, the petition is **GRANTED**. The Decision dated April 15, 2016 and the Resolution dated December 9, 2016 of the Court of Appeals in CA G.R. CR No. 36556 are hereby **REVERSED** and **SET ASIDE**. **Accordingly, petitioner Edwin Fuentes y Garcia @ "Kanyod" and Nicky Calotes y Valenzuela @ "Jojo" are ACQUITTED of the**

⁴¹ Id.

⁴² Id. at 41.

⁴³ G.R. No. 228718, January 7, 2019.

crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.⁴⁴ (Additional emphasis supplied)

Without question, Dy's conviction rests on the same set of facts and circumstances as the conviction of Cepeda, her co-accused before the CA. Hence, following the instruction of *Fuentes* and the higher demand of substantial justice, the supervening acquittal of Dy in the instant appeal must likewise be extended to Cepeda.

Exhortation

With this case as its platform, the Court takes this opportunity to address a point of interest.

The drug menace has been a several decades-old problem — its pervasiveness, indiscriminate, and its complexity, ever-evolving. Its suppression, therefore, must come with equally, if not more, complex and creative methods. On this score, our law, as a preventive measure, imposes incredibly harsh penalties for drug offenses, with life imprisonment as the most extreme.

While it is not for the Court to question the law it interprets, it cannot turn a blind eye to the disparity between whatever damage is sustained by the public and the corresponding duration of imprisonment suffered by the accused — it is astronomical. This case demonstrates such a situation.

Without this appeal of last resort, Dy and Cepeda would have been damned to live the rest of their lives languishing in prison for allegedly selling 0.04 gram of *shabu* worth Five Hundred Pesos (₱500.00). The potential gain of such measly amount to the accused, even when taken together with the potential damage to the public, undeniably pales in comparison to a lifetime deprived of liberty and separation from society.

The Court is not oblivious to the logistical challenges that anti-drug operations pose, and neither is it unmindful of the wide latitude for abuse in the hands of our law enforcement agents. However, bearing the foregoing in mind, the Court wishes to remind our officers of what is at stake in dangerous drugs cases. More than the protection of the public, it is the life and liberty of the citizenry that hang in the balance. In this case, the impropriety committed by the buy-bust team is almost tangible. The procedure employed was a poor imitation of the mandatory procedure laid down by law.

Too, the Court is dismayed with the prosecution of this case, as represented by the Office of the Solicitor General (OSG). The records show that the Appellee's Brief before the CA was due for filing on December 27,

⁴⁴ Id. at 8.

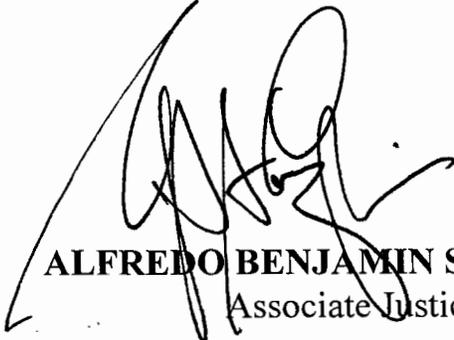
2014.⁴⁵ However, the OSG went on to file **six (6)** motions for extension,⁴⁶ claiming at some point that a draft had already been made, albeit undergoing revision.⁴⁷ And yet, even with a total extension of **one hundred fifty (150) days** to file its pleading, **no Appellee's Brief was ever filed.**⁴⁸ Meanwhile, Dy and Cepeda were already serving out their sentences. This is aggravated by the fact that they have been confined starting 2011, as the crimes charged are non-bailable. As lawyer for the People, the OSG should have been more forthcoming with the CA, instead of requesting for additional periods only to end up not filing anything at all.

It has been eight (8) years since Dy and Cepeda have been in confinement. Surely, this acquittal will be welcomed by the accused. However, there remains no recompense for the time spent in prison under an erroneous conviction, regardless of its duration. It is in this light that the Court restores the liberty of the accused.

WHEREFORE, premises considered, the appeal is **GRANTED** and the Decision dated May 3, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01318-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Loren Dy y Sero and accused William Cepeda y Dultra are hereby **ACQUITTED** of the crimes charged. They are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

Let a copy of this Decision be sent to the Superintendent of the Davao Prison and Penal Farm, Davao del Norte, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to the Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁴⁵ CA *rollo*, p. 44.

⁴⁶ Id. at 44-47, 48-51, 52-55, 56-59, 60-63 and 64-67.

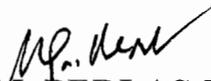
⁴⁷ Id. at 56, 64.

⁴⁸ Id. at 68.

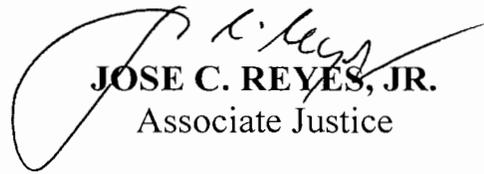
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

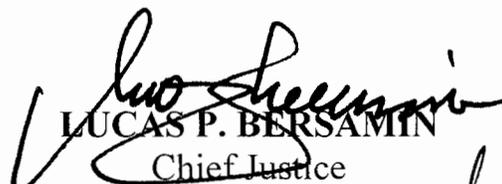
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



LUCAS P. BERSAMIN
Chief Justice

