

SUPREME COURT OF THE PHILIPPINES  
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Manila

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*Wilfredo Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division  
JUL 24 2019

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 231917**

**Present:**

PERALTA, J., *Chairperson,*  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
INTING, JJ.

*-versus-*

**ANSARI SARIP y BANTOG**  
Accused-Appellant.

**Promulgated:**

**July 8, 2019**

X ----- *Wilfredo Lapitan* ----- X

**DECISION**

**PERALTA, J.:**

This is an appeal of the Court of Appeals' (CA) Decision<sup>1</sup> dated October 7, 2016 dismissing Ansari Sarip y Bantog's appeal and affirming the Judgment<sup>2</sup> dated August 19, 2014 of the Regional Trial Court (RTC), Branch 25, Misamis Oriental, Cagayan de Oro City, convicting the same appellant of Violation of Section 5, Article II, of Republic Act (R.A.) No. 9165.

The facts follow.

Around 6:00 p.m. of May 19, 2011, a confidential informant went to the City Special Operations Group (CSOG) and informed the office that a certain person was selling *shabu* at Barangay 31, Santo Niño. Acting on the said information, Police Senior Inspector Gilbert Rolon and Police Senior Inspector Ludwig Charles Espera formed a buy-bust team and called the

<sup>1</sup> Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Ronaldo B. Martin and Perpetua T. Atal-Paño concurring; *rollo*, pp. 3-19.  
<sup>2</sup> Penned by Judge Arthur L. Abundiente; *CA rollo*, pp. 38-44.

Philippine Drug Enforcement Agency (*PDEA*) for the pre-operational number of the operation. A ₱50.00 bill was also prepared as a marked money. PO2 Jerry Michael B. Baranda (*PO2 Baranda*) was designated as the team leader and the confidential informant was to act as the poseur-buyer.

Later in the evening of the same day, around 8:00 p.m., the buy-bust team composed of PO2 Baranda, PO2 Sangkula Hussein (*PO2 Hussein*), SPO1 Angelito Baguilid (*SPO1 Baguilid*) and PO1 Reymund Seno (*PO1 Seno*) went to Barangay 31 beside Pearlmont Hotel, where they parked, on board an unmarked Mitsubishi Adventure. Thereafter, PO2 Baranda and PO2 Hussein transferred to a “*trisikad*,” while the confidential informant went ahead to the designated meeting place. The other members of the team remained in the vehicle.

At the meeting place, the confidential informant approached appellant, while PO2 Baranda and PO2 Hussein stood and observed the transaction from a well-lighted area that is more or less 10-12 meters away from the confidential informant and the appellant. The said police officers saw, from their vantage point, the confidential informant give to the appellant the marked money and the latter handed a transparent plastic sachet to the confidential informant. Immediately thereafter, the confidential informant gave the pre-arranged signal by removing his black ball cap and the buy-bust team approached the appellant. Appellant tried to resist, thus, a scuffle ensued. Eventually, the appellant was subdued.

The poseur-buyer then turned over the plastic sachet of suspected shabu to PO2 Baranda and the latter put the said plastic sachet inside his pocket before putting a handcuff on the appellant and apprised him of his rights. During the body search, PO2 Baranda was able to retrieve the marked money from appellant’s pocket. At that time, PO2 Baranda and the rest of his team decided to conduct the marking and the inventory at the office because a lot of people started to congregate on the area.

At the office, PO2 Baranda marked the plastic sachet with his initials “*JB*.” He also prepared the seized items and the request letter for laboratory examination, drug test on appellant, and the check of the presence of ultraviolet markings on appellant. Thereafter, PO2 Baranda and PO2 Hussein brought the appellant and the plastic sachet with white crystalline substance to the PNP Regional Crime Laboratory Office (*RCLO*) for examination. Appellant’s urine sample tested positive for methamphetamine hydrochloride (shabu), and the results of the examination conducted by Police Senior Inspector (*PSI*) Charity Peralta Caceres on the seized item showed that the white crystalline substance inside the plastic sachet was shabu. Laboratory results also showed that both hands of appellant were positive for ultraviolet fluorescent powder, indicating that he handled the marked money.



Consequently, an Information was filed against appellant for violation of Section 5, Article II of R.A. No. 9165, which reads as follows:

That on May 19, 2011 at about 9:00 o'clock in the evening, more or less, at Santo Niño, Barangay 31, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally, and knowingly sell and/or offer to sell and give away to a poseur-buyer/decoy, one (1) pc. small heat-sealed transparent plastic sachet containing white crystalline substance of methamphetamine hydrochloride, locally known as shabu, a dangerous [drug], weighing 0.03 gram, which after a confirmatory test conducted by the PNP Crime Laboratory, was found positive of the presence of methamphetamine hydrochloride, accused knowing the same to be a dangerous drug, in consideration of Two Hundred Fifty (P250) Peso Bill with one (1) P50 Peso Bill with Serial Number TU380843 as marked money.

Contrary to an in violation of Section 5, Article II of R.A. 9165.<sup>3</sup>

Appellant pleaded "not guilty" to the charge against him. Hence, the trial on the merits ensued.

For his defense, appellant denied committing the crime. According to him, on May 19, 2011, around 8:00 p.m., he went outside his uncle's house to buy dinner at a nearby carinderia, however, before reaching the place, he was accosted and held by two male persons wearing casual clothes, whom he later identified as PO2 Baranda and PO2 Hussein. When the two held appellant, they asked him his name and he replied, "*Ansari Sarip*." After answering, one of the men protested and insisted that appellant's real name is "*Alex*." Appellant told the police officers that there are several people with the name of Alex in their place but the latter two did not believe him Appellant was then handcuffed behind his back and was made to ride in their service vehicle, a white Toyota Revo. The vehicle immediately left and stopped near Pearlmont Hotel. Appellant was asked by the police officers whether he had Fifty Thousand Pesos (₱50,000.00) so that they could release him. Appellant told them that he only had Sixteen Pesos (₱16.00), which was intended to buy food at the carinderia. Thus, appellant was brought to the Maharlika Police Station.

While at the police station, appellant noticed that an item was placed on top of the table and a picture of it was taken. He was then brought to another place where his hand was placed under an ultraviolet lamp.

The RTC, on August 19, 2014, rendered its Decision finding appellant guilty beyond reasonable doubt of the offense charged in the Information. The dispositive portion of the said Decision reads as follows:

WHEREFORE, premises considered, this Court finds hereby accused ANSARI SARIP Y BANTOG GUILTY BEYOND REASONABLE DOUBT of the crime as charged in the Information, and hereby sentenced (sic) him to life imprisonment, and to pay the Fine in the amount of P500,000.00 without subsidiary penalty in case of non-payment of Fine.

Let the penalty be imposed on the accused serves (sic) as an example to those who have the same propensity to commit the forbidden acts mentioned under R.A. 9165 that crime does not pay, and the temporary financial benefit which one derives in dealing with illegal drugs cannot compensate for the penalty which he will suffer if he will be arrested, prosecuted, and penalized to the full extent of the law.

SO ORDERED.<sup>4</sup>

Appellant filed his appeal with the CA, and on October 7, 2016, the appellate court dismissed the appeal and affirmed the decision of the RTC, thus:

WHEREFORE, the appeal is DENIED. The Judgment dated August 19, 2014 of the Regional Trial Court of Misamis Oriental, Cagayan De Oro City, Branch 25, in Criminal Case No. 2011-465, finding appellant ANSARI SARIP y BANTOG guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, is AFFIRMED.

SO ORDERED.<sup>5</sup>

After appellant's motion for reconsideration was denied, he comes to this Court for the resolution of his appeal.

In the Appellant's Brief, the following issues are raised:

THE PROSECUTION DID NOT PRESENT ITS BEST WITNESS – THE POSEUR-BUYER – WHOSE TESTIMONY IS INDISPENSABLE TO THE CONVICTION OF THE APPELLANT.

THE INTEGRITY AND EVIDENTIARY VALUE OF THE ILLEGAL DRUG WAS NOT PRESERVED.

NO BUY-BUST OPERATION WAS EVER CONDUCTED.<sup>6</sup>

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<sup>4</sup> CA rollo, pp. 43-44.

<sup>5</sup> Rollo, p. 18.

<sup>6</sup> CA rollo, pp. 26, 28 and 33.

Appellant contends that the prosecution's failure to present the testimony of the poseur-buyer is fatal, because he is the best witness to establish the charge against appellant and that the testimonies of the police officers regarding the participation of the poseur-buyer are mere hearsay. Appellant also argues that the police officers failed to observe the chain of custody required by law. According to appellant, for there to be an exception to the rule on the chain of custody, the police officers must have valid reasons behind such procedural lapses. Finally, appellant claims that there was no buy-bust operation and that the prosecution was not able to establish the validity of the alleged buy-bust operation.

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.<sup>7</sup>

What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.<sup>8</sup>

In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.<sup>9</sup> In *People v. Gatlabayan*,<sup>10</sup> the Court held that "it is therefore of prime importance that the identity of the dangerous drug be likewise established beyond reasonable doubt. Otherwise stated, it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court."<sup>11</sup> 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.<sup>12</sup> Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."<sup>13</sup>

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

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<sup>7</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 669 Phil. 240 (2011).

<sup>11</sup> *Id.* at 252.

<sup>12</sup> *People v. Mirondo*, 771 Phil. 345, 357 (2015).

<sup>13</sup> See *People v. Ismael*, *supra* note 7.



(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:

(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."<sup>14</sup> 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 apprehended."<sup>15</sup> In addition, "[t]he requirement that inventory is required to be done in police stations is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."<sup>16</sup>

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."<sup>17</sup> 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 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

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<sup>14</sup> Senate Journal, Session No. 80, 16<sup>th</sup> Congress, 1st Regular Session, June 4, 2014, p. 348.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 349.

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. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.<sup>18</sup>

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, this Court has ruled in *People v. Miranda*:<sup>19</sup>

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.<sup>20</sup>

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<sup>18</sup> *Id.* at 349-350.

<sup>19</sup> G.R. No. 229671, January 31, 2018.

<sup>20</sup> 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, 845 SCRA 370, 381-382; *People v. Ching*, G.R. No. 223556, October 9, 2017, 842 SCRA 280, 294-296; *People v. Geronimo*, G.R. No. 225500, September 11, 2017, 839 SCRA 336, 347-349; *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 624-626; and *People v. Macapundag*, 807 Phil. 234, 243 (2017).



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.”<sup>21</sup> 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 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.

It clearly appears in the testimony of PO3 Baranda that the provisions of Section 21 have not been followed, nor was there any explanation as to their non-compliance, thus:

Q What happened to the CI?

A The CI did not yet go Sir and he gave to me the sachet which he was able to buy.

Q What did you do with the shabu handed to you by the CI?

A I placed it first in my pocket Sir because we have to handcuff him and inform him of his rights.

Q And then, what happened next Mr. Witness?

A After we searched his body we were able to get the marked money including the P250.00, Sir.

Q Where did you recover the marked money, Mr. Witness?

A From his right pocket, Sir.

Q And then, what did you and your companions tell him if any?

A We then informed him his rights and after that we called the mobile to proceed to the area for him to be brought to our office, Sir.

x x x x

Q What happened next, Mr. Witness?

A After we boarded him to our vehicle Sir we proceeded to our office and we prepared the markings and request for the laboratory examination.



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<sup>21</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 247.

Q Who was in possession of the drugs from the place you arrested him in going to the office, Mr. Witness?

A It was in my possession, Sir.

Q Also the buy-bust money?

A Yes, Sir.

Q And then, what happened at the office, Mr. Witness?

A We prepared the markings and a letter request for RCLO, Sir.

Q What is RCLO?

A Regional Crime Laboratory Office, Sir.

Q What did you do with the sachet of shabu bought from the accused?

A We marked it Sir and we placed it inside a cellophane.

Q Only at the office?

A Yes, Sir.

Q Why only at the office Mr. Witness not at the crime scene?

A Me, SPO1 [Hussein] and our investigator SPO1 Apollo Neil delas Alas, Sir.

Q My question is, why only at the office not at the scene did you mark the evidence?

A We immediately left the crime scene sir because there were many people already mailing (sic) around.

x x x x

Q What else did you prepare at the office, Mr. Witness?

A The request for the crime laboratory examination, Sir.

Q Is this the request, Mr. Witness?

A Yes, Sir.

Q In the right upper portion, there is a rubber stamp Delivered by: PO2 Baranda, where did you sign this one, Mr. Witness?

A At RCLO 10, Sir.

Q At the crime lab when you delivered this?

A Yes, Sir.<sup>22</sup>

Furthermore, a careful examination of the records would show that the inventory receipt was not presented as evidence. Thus, it cannot be determined whether or not during the physical inventory and photograph of the items seized, the representatives required by law are present. Such was also not testified to that the police officers complied with the same provisions of the law.

It must be remembered that the non-compliance of the procedure set forth in Section 21 of R.A. No. 9165 may only be allowed in certain circumstances. In *People v. Angelita Reyes, et al.*,<sup>23</sup> 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 125<sup>24</sup> 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*,<sup>25</sup> 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 proved 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 from obtaining the presence of the required witnesses even before the offenders could escape.

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<sup>23</sup> G.R. No. 219953, April 23, 2018.

<sup>24</sup> 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).

<sup>25</sup> G.R. No. 224290, June 11, 2018.



Earnest effort to secure the attendance of the necessary witnesses must also be proven as held in *People v. Ramos*,<sup>26</sup> thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in section 21 of RA 9165. As such, police officers are compelled not only to state the reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

<sup>26</sup> G.R. No. 233744, February 28, 2018.

<sup>27</sup> See *People v. Macapundag*, *supra* note 20.

<sup>28</sup> See *People v. Miranda*, *supra* note 19; *People v. Paz*, *supra* note 20; *People v. Mamangon*, *supra* note 20; and *People v. Jugo*, *supra* note 20.

<sup>29</sup> *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 560.

<sup>30</sup> See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017, 849 SCRA 294; *People v. Arposeple*, G.R. No. 205787, November 22, 2017, 846 SCRA 150; *Aparente v. People*, G.R. No. 205695, September 27, 2017, 841 SCRA 89; *People v. Cabellon*, G.R. No. 207229, September 20, 2017, 840 SCRA 311; *People v. Saragena*, *supra* note 29; *People v. Saunar*, G.R. No. 207396, August 9, 2017, 836 SCRA 471; *People v. Sagana*, *supra* note 21; *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19, 33.



The records of this case show that the prosecution was not able to present any evidence that would justify the non-compliance of Section 21 of R.A. 9165. Thus, this Court finds it apt to acquit the appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

**WHEREFORE**, the Decision dated October 7, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01322-MIN dismissing appellant's appeal and affirming the Judgment dated August 19, 2014 of the Regional Trial Court, Branch 25, Misamis Oriental, Cagayan de Oro City, convicting appellant Ansari Sarip y Bantog of Violation of Section 5, Article II, R.A. 9165 is **REVERSED AND SET ASIDE**. Appellant is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

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

**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
 Associate Justice

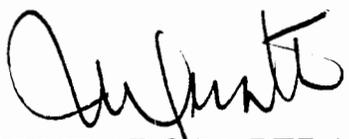
  
**ANDRES B. REYES, JR.**  
 Associate Justice

  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
 Associate Justice

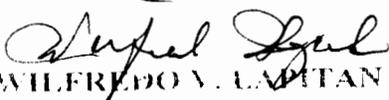
**ATTESTATION**

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.

  
**DIOSDADO M. PERALTA**  
 Associate Justice  
 Chairperson, Third 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.

CERTIFIED TRUE COPY  
  
**WILFREDO V. LAPIDAN**  
 Division Clerk of Court  
 Third Division

  
**LUCAS P. BERSAMIN**  
 Chief Justice

JUL 24 2019