Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

EDUARDO CARIÑO *Y* LEYVA,
Accused-Appellant.

G.R. No. 234155

Present:

BERSAMIN, *C.J., Chairperson,*
DEL CASTILLO,
JARDELEZA,*
GESMUNDO, and
CARANDANG, *JJ.*

Promulgated:

MAR 2 5 2019

x - x

DECISION

GESMUNDO, *J.*:

On appeal is the May 12, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 08344, which affirmed the April 21, 2016 Joint Decision[2] of the Regional Trial Court of Tarlac City, Branch 64 (*RTC),* finding Eduardo Cariño *y* Leyva *(appellant)* guilty of one (1) count of violation of Section 6, Article II, or Maintenance of Drug Den, in Criminal Case No. 16340; and one (1) count of violation of Section 11, Article II or illegal possession of dangerous drugs in Criminal Case No. 16341, under Republic Act *(R.A.)* No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

---

* On official business.

[1] *Rollo*, pp. 2-16; penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Ramon A. Cruz and Carmelita Salandanan-Manahan, concurring.

[2] CA *rollo,* pp. 51-65; penned by Presiding Judge Lily C. De Vera-Vallo.

Antecedents

Appellant was charged in three separate informations with illegal sale of dangerous drugs (0.08 gram of methamphetamine hydrochloride *(shabu),* maintenance of a drug den, and illegal possession of dangerous drugs (0.04 gram of shabu). During arraignment, appellant pleaded "not guilty" to all charges. After consolidation, joint trial ensued.[3]

Evidence of the Prosecution

The prosecution presented the following witnesses: SPO2 Eduardo Navarro *(SPO2 Navarro),* SPO2 Jorge Andasan, Jr. *(SPO2 Andasan, Jr.),* and Forensic Chemist PSI Jebie Timario *(PSI Timario).*[4] Their combined testimonies tended to establish the following:

On July 24, 2009, SPO2 Navarro arrested a certain Dexter Valencia *(Valencia)* for possession of illegal drugs. Valencia admitted that appellant's house, located at MacArthur Highway, Block 3, San Nicolas, Tarlac City, was purposely used for shabu sessions. On that same day, SPO2 Navarro went to appellant's house to warn him of his illegal activities.[5]

On July 30, 2009, at around 8:30 a.m., SPO2 Navarro and his team, which included SPO2 Andasan and a certain Jay Mallari *(Mallari),* conducted a surveillance operation around the vicinity of appellant's house. SPO2 Navarro was stationed at the highway, SPO2 Andasan along Block 3, and another team member at Block 4. According to SPO2 Navarro, he saw three persons inside appellant's house, later identified as Noel Manianglung *(Manianglung),* Alma Bucao *(Bucao),* and Milagros Soliman *(Soliman),* who were also in the "drug list."[6]

After a couple of minutes, SPO2 Navarro saw appellant come out of his house and head towards the house of a certain Tikong Dulay *(Dulay).* SPO2 Navarro followed him and he saw appellant hand some money to Dulay in exchange for four sachets of shabu.[7]

---

[3] *Rollo,* pp. 3- 4.
[4] Id. at 4.
[5] Id.
[6] Id. at 4-5.
[7] Id. at 5.

Appellant went back to his house, with SPO2 Navarro following and returning to his position at the highway. He signaled Mallari to move closer to appellant's house. A few minutes later, Mallari gave a signal to SPO2 Navarro that a "pot session" was taking place inside appellant's house. Appellant then came out of his house. At that point, SPO2 Navarro approached appellant and told him he was being arrested for delivering shabu and maintaining a drug den. After the arrest, SPO2 Navarro stooped to look inside the house and confirmed that Noel Manianglung was heating foil with a lighter and a woman was holding a rolled aluminum foil and using it as a "tooter."[8]

SPO2 Navarro and his team then entered appellant's house. He found on top of a table one (1) opened or used small plastic sachet *(marked as ETN-1)*; two (2) heat-sealed transparent plastic sachets containing white crystalline substance *(marked as ETN-2 and ETN-3)*; seven (7) aluminum foils inside a cigarette pack *(marked as ETN-4);* and three (3) disposable lighters *(marked as ETN-5, ETN-6, and ETN-7)*. There were also two other sachets of shabu-like substance confiscated from Manianglung, which were hidden in his cell phone *(marked as ETN and ETN-a)*. At the place of arrest, SPO2 Navarro prepared a receipt of property seized, which was signed by Edizon Dizon, barangay chairman of San Nicolas, and Owen Policarpio, representative of the Department of Justice *(DOJ)*. Appellant refused to sign the inventory. The seized items were also photographed. [9]

After the marking and inventory, SPO2 Navarro placed the seized items in a plastic bag and brought them to the police station where he prepared a request for laboratory examination. At around 1:45 p.m. on July 30, 2009, SPO2 Navarro delivered the seized items to the crime laboratory, which were received by PSI Timario. The latter's examination found that the substances marked ETN-2, ETN-3, ETN, and ETN-a tested positive for methamphetamine hydrochloride or shabu, and each sachet weighed 0.02 gram. PSI Timario then turned over the items to the evidence custodian.[10]

Evidence of the Defense

Only appellant testified for the defense. He stated that on July 30, 2009, at around 9:00 a.m., he was at home nursing a foot injury and went to his backyard to get calamansi thorns to treat it. He had three visitors at that time, Bucao, Soliman, and Manianglung. While at the backyard, he was

---

[8] Id.
[9] Id. at 5-6.
[10] Id. at 6.

approached by SPO2 Navarro and his team. They asked if they could enter his premises. Appellant inquired if they had a search warrant, to which SPO2 Navarro answered in the negative. Since they were law enforcers, appellant allowed them inside the house.[11]

They searched appellant but found nothing on him. However, they found two (2) sachets inside Manianlung's cellphone. When asked where those came from, Manianglung pointed to appellant. The latter was asked to sign papers, which he refused to do. They were brought to Camp Macabulos to undergo a drug examination, with positive results.[12] Appellant averred that he did not sell or push drugs; however, he admitted that he was also a victim being a drug user himself.[13]

The RTC Ruling

In its April 21, 2016 joint decision, the RTC acquitted appellant in Criminal Case No. 16339 for illegal sale of dangerous drugs; convicted him in Criminal Case No. 16340 for maintenance of a drug den, with the penalty of life imprisonment and a fine of ₱500,000.00; and convicted him in Criminal Case No. 16341 for illegal possession of dangerous drugs, with the penalty of twelve (12) years and one (1) day to twenty (20) years, and a fine of ₱300,000.00.

The RTC acquitted appellant of the charge of illegal sale of dangerous drugs because the police officers conducted only a surveillance, not a buy-bust operation. Thus, the prosecution was not able to substantiate its allegation that appellant took part in the sale of drugs.

Nevertheless, the RTC gave credence to the testimonies of the prosecution's witnesses, corroborated even by appellant himself, that he consented to the use of his house for "pot sessions" and sexual activities for minimal fees. The trial court gave weight to SPO2 Navarro's testimony stating that Valencia, who was caught for possession of dangerous drugs a few days before appellant's arrest, had admitted that he used drugs inside appellant's house. The RTC underscored that appellant's intent to use his property as a drug den was proven.[14]

---

[11] Id.
[12] Id. at 6-7.
[13] Id. at 15.
[14] Supra note 2.

A99

Further, the RTC found present all the elements of the crime of illegal possession of dangerous drugs. The two small transparent plastic sachets containing shabu were found on top of the table inside his house. Though it was not found in his immediate possession, he still had constructive possession of the drugs because these were found in a place where he had dominion or control.

Aggrieved, appellant appealed before the CA.

The CA Ruling

In its decision, the CA affirmed appellant's conviction. It ruled that the drugs seized were admissible since they were the result of a valid warrantless search and seizure under the "plain view doctrine." Also, it affirmed the RTC in ruling that the chain of custody was complied with. Though there was no media representative, this may be overlooked with the substantial observance of the other requirements.

The CA also affirmed the RTC ruling that there was, indeed, maintenance of a drug den, based on SPO2 Navarro's observation and the house's general reputation. While Valencia's statement was hearsay evidence, it was not objected to by the defense; hence, the CA gave weight to the statement that appellant's house was used as a drug den. As to the charge of possession of illegal drugs, the CA affirmed the RTC ruling that appellant had full control and dominion of the drugs found in his house.[15]

Hence, this appeal.

ASSIGNMENT OF ERRORS

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 6 AND 11, ARTICLE II OF R.A. NO. 9165 DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM BASED ON THE FRUIT OF THE POISONOUS TREE DOCTRINE.

---

[15] Supra note 1.

A99

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 6 AND 11, ARTICLE II OF R.A. NO. 9165 DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGEDLY SEIZED DRUG ITEM.[16]

In its November 27, 2017 Resolution,[17] the Court required the parties to submit their respective supplemental briefs, if they so desired. In his April 13, 2018 manifestation,[18] in lieu of supplemental brief, appellant stated that he would no longer file a supplemental brief since all relevant issues were exhaustively discussed in the appellant's brief. In its March 19, 2018 Manifestation,[19] the Office of the Solicitor General *(OSG)* stated that it will dispense with the filing of a supplemental brief to expedite the resolution.

THE COURT'S RULING

The Court finds the appeal partially meritorious.

Maintenance of a drug den

For an accused to be convicted of maintenance of a drug den under Section 6 of R.A. No. 9165, the prosecution must establish with proof beyond reasonable doubt that the accused is "maintaining a den" where any dangerous drug is administered, used, or sold.[20] Hence, two things must be established: (a) that the place is a den — a place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form; and (b) that the accused maintains the said place. It is not enough that the dangerous drug or drug paraphernalia were found in the place. More than a finding that dangerous drug is being used thereat, it must also be clearly shown that the accused is the maintainer or operator or the owner of the place where the dangerous drug is used or sold.[21]

---

[16] CA *rollo*, p. 28.
[17] *Rollo*, pp. 22-23.
[18] Id. at 30-32.
[19] Id. at 24-26.
[20] See *People v. Galicia*, G.R. No. 218402, February 14, 2018.
[21] Id.

In this case, the prosecution alleged that the police officers saw in "plain view" that several persons were using drugs inside the house of appellant. The prosecution also alleged that the house had a general reputation as a drug den based on Valencia's statement that he consumed shabu inside the said house.

The Court is not convinced that appellant's guilt was proven beyond reasonable doubt.

Objects sighted in plain view by an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he inadvertently comes across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.[22]

Here, it was a certain Mallari who saw that drugs were being used inside appellant's house during the surveillance operation. SPO2 Navarro testified as follows:

PROS. MANGLICMOT

Q: Who among your companions witnessed the incident?
A: Jay Mallari, sir.

Q: It was Jay Mallari who witnessed the trade?
A: No, sir, not the trade, the use.[23]

However, Mallari was never presented as a witness. His rank as a police officer and his assigned role during the alleged surveillance operation were not provided by the prosecution. Thus, it could not be determined from the records whether the requisites of the plain view search were complied with against appellant's alleged crime of maintenance of a drug den. The

---

[22] *Miclat, Jr. v. People,* 672 Phil. 191, 206 (2011).
[23] TSN, January 31, 2012, p. 18.

p 11

validity of the plain view search is crucial since it will determine whether the police officers conducted a valid warrantless search and arrest against appellant and his house. The prosecution did not give any justification for its failure to present Mallari as a witness.

Instead, the prosecution presented SPO2 Navarro who, from his position, could not see what was happening inside appellant's house, *viz.*:

> PROS. MANGLICMOT
>
> Q: From the place where you were positioned, can you see what was happening inside the house of Cariño?
> **A: No, I cannot, sir.**
>
> x x x x
>
> Q: While monitoring the house of Cariño on that date, July 30 at 8:30 in the morning, did you notice where Cariño was?
> A: He was inside his house together with the three (3) visitors, sir.
>
> Q: Did you actually see Cariño there?
> A: No, sir.[24] (emphasis supplied)

Worse, SPO2 Navarro, who arrested appellant, testified that he first performed a warrantless arrest against appellant before he allegedly saw people using drugs inside the house, to wit:

> PROS. MANGLICMOT
>
> Q: When he noticed you approaching, what did Cariño do if any?
> A: None, sir.
>
> x x x x
>
> Q: And what happened when you got near Cariño?
> A: I told him that I am arresting him for delivering shabu and making his house as a drug den **and then I stoop down and saw Mr. Manianglung holding lighter and aluminium foil, then we entered their house and found on the table two (2) sachets of drugs x x x**
>
> x x x x

[24] Id. at 11-12.

Q: But from the possession of Cariño, you were not able to find drugs in his person?
A: None, sir.[25] (emphasis supplied)

The affidavit of SPO2 Navarro also confirmed that he first arrested appellant before he saw drugs inside his house, *viz.:*

> x x x That Eduardo Cariño went inside his house and after a few minutes again went outside his house and stand guard at his gate. **At that juncture [SPO2] Navarro and team move-in and informed Eduardo Cariño *y* Leyva that he is being arrested for delivering drugs and maintaining a drug den**, getting inside the house we saw Noel [Manianglung] *y* Manalac, Alma Bucao *y* Gaviola and Milagros Soliman *y* Roxas huddled in a table where we saw Two (2) heat sealed transparent plastic sachets containing shabu weighing 0.04 grams *(sic),* one (1) open/used small plastic sachet, seven (7) aluminum foil strips and three (3) disposable lighters. x x x[26] (emphasis supplied)

In warrantless arrests made pursuant to Section 5(a), Rule 113, two elements must concur, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer.[27] A valid warrantless arrest under the parameters of Section 5(a), Rule 113 of the Rules of Court requires that the apprehending officer must have been spurred by probable cause to arrest a person caught *in flagrante delicto*. To be sure, the term probable cause has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[28]

In this case, appellant was not doing anything beforehand when he was arrested by SPO2 Navarro. Certainly, it does not satisfy the elements of a valid warrantless arrest under Section 5(a) of Rule 113 because SPO2 Navarro had no probable cause before the arrest that appellant was committing or had just committed the crime of maintenance of a drug den. It was only after his arrest that SPO2 Navarro purportedly saw the drugs being used inside appellant's house. Again, the finding of probable cause cannot apply after the warrantless arrest had been made.

---

[25] TSN, April 10, 2012, pp. 4-5.
[26] Records, p. 2.
[27] *Macad v. People*, G.R. No. 227366, August 1, 2018.
[28] Id.

Notably, Mallari could have established the overt act that drugs were being used inside appellant's house before the arrest. Lamentably, he was not presented as a witness by the prosecution, thus, the facts and circumstances that would create probable cause to arrest appellant could not be determined. The Court cannot make guesswork whether Mallari truly had probable cause to justify the warrantless arrest of appellant by SPO2 Navarro.

The questionable and invalid arrest thus makes the subsequent search in the house of appellant also invalid, the exclusionary rule or the doctrine of the fruit of the poisonous tree applies. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act; whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained.[29]

In this case, the primary source is appellant, who was arrested illegally without probable cause. Thus, all secondary or derivative evidence drawn from the arrest of appellant is also inadmissible as evidence, including those seized from the search inside his house.

The general reputation of the house was not established.

Further, one of the essential requisites of the crime, that the place maintained by the offender is a drug den, was not proven. A drug den is a lair or hideaway where prohibited or regulated drugs are used in any form or are found. Its existence may be proved not only by direct evidence but may also be established by proof of facts and circumstances, including evidence of the general reputation of the house, or its general reputation among police officers.[30]

---

[29] *People v. Fatallo,* G.R. No. 218805, November 7, 2018.
[30] *People v. Rom*, 727 Phil. 587, 605 (2014).

Here, the prosecution alleged that a certain Valencia was arrested for possession of illegal drugs. Valencia admitted that appellant's house was purposely used for shabu sessions, thus, the general reputation of appellant's house as a drug was allegedly proven.

Again, the Court is not convinced.

Valencia, who allegedly used drugs inside appellant's house, was never presented as a witness by the prosecution. Again, the prosecution offered no reason for the non-presentation of Valencia. It did not present any written statement or affidavit signed by Valencia. Even the nature or status of the criminal charges allegedly filed against him was not provided in court. Instead, it was SPO2 Navarro who testified on the alleged statement of Valencia, *viz.*:

> PROS. MANGLICMOT
>
> Q: Were you able to verify the data or the information supplied to you by your asset that Cariño is engaged in illegal activities, he is maintaining a drug den, he is a runner and his house is used for the sexual activities of his visitors?
> A: Yes, sir, as I have mentioned earlier, we caught a certain Dexter [Valencia] there with shabu purposely to take that shabu inside the house of Mr. Cariño.
>
> Q: When was that when you caught this Dexter [Valencia]?
> A: July 24, I think, sir.
>
> Q: Before you confronted Cariño?
>
> x x x x
>
> A: Yes, it was July 24, sir.
>
> Q: How did you effect the arrest of this one Dexter [Valencia]?
> A: When he saw me, sir, he threw the sachet of shabu, so I arrested him.
>
> **Q: How did you come to know that he went there to the house purposely to consume shabu?**
> **A: He told me that he went there purposely to consume shabu, sir.**
>
> Q: Was that before he threw the shabu?
> A: After, sir, on the interrogation.[31] (emphasis supplied)

[31] TSN, January 31, 2012, pp. 6-7.

899

Obviously, the purported statement of Valencia is hearsay. It is a basic rule in evidence that a witness can testify only on the facts that are of his own personal knowledge, *i.e.,* those which are derived from his own perception. A witness may not testify on what he has merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. Hearsay evidence is evidence, not of what the witness knows himself but of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits.[32]

The general rule is that hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence. But one should not be misled into thinking that such declarations are impressed with probative value. Admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not cannot be given credence for it has no probative value.[33]

In this case, the CA erred in stating that SPO2 Navarro's hearsay testimony, which was not objected to by the defense, should still be given evidentiary weight. It failed to consider that hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule; which do not, however, obtain in this case.[34]

Further, it must be emphasized that in criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right to confront the witnesses testifying against him and to cross-examine them. A conviction based alone on proof that violates the constitutional right of an accused is a nullity and the court that rendered it acted without jurisdiction in its rendition. Such a judgment cannot be given any effect whatsoever especially on the liberty of an individual.[35]

Thus, the hearsay testimony of SPO2 Navarro cannot be given evidentiary value to convict appellant for the crime of maintenance of a drug den.

---

[32] *Miro v. Vda. de Erederos, et al.*, 721 Phil. 772, 790 (2013); citations omitted.
[33] *People v. Parungao*, 332 Phil. 917, 924 (1996).
[34] *Republic v. Galeno*, 803 Phil. 742, 750 (2017).
[35] *People v. Mamalias*, 385 Phil. 499, 513 (2000).

Possession of dangerous drugs; chain of custody rule

In prosecutions for illegal possession of dangerous drugs, such as in this case, the *corpus delicti*, apart from the elements of the offense, must be established beyond reasonable doubt. In other words, proving the existence of all the elements of the offense does not suffice to sustain a conviction. The State equally bears the obligation to prove the identity of the seized drug, failing in which, the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt.[36]

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage; from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.[37] To ensure the establishment of the chain of custody, Section 21(1) of R.A. No. 9165 specifies that:

> (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.

Section 21(a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 supplements Section 21(1) of the said law, *viz.:*

> (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

---

[36] *People v. Guanzon*, G.R. No. 233653, September 5, 2018.
[37] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

> officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that noncompliance 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.

Based on the foregoing, Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory and photograph the same in the presence of **(1) the accused or the persons 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.**[38]

Notably, Sec. 21 of R.A. No. 9165 was recently amended by R.A. No. 10640, which became effective on July 15, 2014. In the amendment, the apprehending team is now required to conduct a physical inventory of the seized items and to photograph the same **(1) in the presence of the accused or the persons 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 be required to sign the copies of the inventory and be given a copy thereof.[39] In the present case, as the alleged crimes were committed on July 30, 2009, then the provisions of Sec. 21 of R.A. No. 9165 and its IRR shall apply.

The Court finds that the prosecution failed to comply with the chain of custody rule under Sec. 21 of R.A. No. 9165 and its IRR. When the police officers conducted the inventory and took photographs of the items seized from the house of appellant, no media representative was present. Under the law, the presence of the accused, a representative from the media and the DOJ, **and** any elected public official is mandatory because the law requires them to sign the copies of the inventory and to be given a copy thereto.

Nevertheless, there is a saving clause under the IRR of R.A. No. 9165 in case of noncompliance with the chain of custody rule. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The

---

[38] *People v. Dahil*, 750 Phil. 212, 228 (2015); emphasis supplied.
[39] *People v. Dela Rosa*, G.R. No. 230228, December 13, 2017; emphasis in the original.

prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug confiscated from the accused during his arrest.[40]

In this case, the prosecution failed to give any justifiable ground for the noncompliance with Sec. 21 of R.A. No. 9165. Evidently, SPO2 Navarro simply stated that there was no media representative available at the time of the inventory, to wit:

> PROS MANGLICMOT
>
> Q: x x x Why was it that no member of the media signed the list of inventory, Mr. witness?
>
> THE WITNESS
> A: There was no available media personnel at that time, sir.
>
> Q: Who made the request for the presence of the media?
> A: Captain Magday, sir.
>
> Q: No media came?
> A: Yes, sir.[41]

Notably, the seizure happened at 8:30 a.m., when offices were open. Further, the surveillance operation was conducted prior to the seizure of the alleged drugs; it was not conducted at the spur of the moment. Thus, the police officers had sufficient opportunity to secure the mandatory witnesses in the inventory and photography of the seized drugs. SPO2 Navarro's bare allegation, without any substantiation, that no media representative was available at the time of the inventory cannot *ipso facto* excuse the noncompliance with the chain of custody.

Further, the entire procedure in the chain of custody was not even discussed by the arresting officers in their affidavits of arrest. In *People v. Lim,*[42] the Court declared that in order to weed out early on from the courts' already congested dockets any orchestrated or poorly built-up drug-related cases, the following should be enforced as a mandatory policy, *viz.:*

---

[40] *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, 789 Phil. 70, 80 (2016).
[41] TSN, April 10, 2012, p. 17.
[42] G.R. No. 231989, September 4, 2018.

899

> 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR.
>
> 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
>
> 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
>
> 4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[43]

Due to the failure to preserve the integrity and evidentiary value of the *corpus delicti,* appellant cannot be convicted of the crime of illegal possession of dangerous drugs.

WHEREFORE, the appeal is **GRANTED**. The May 12, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08344 is **REVERSED** and **SET ASIDE**. Appellant Eduardo Cariño *y* Leyva is **ACQUITTED** of violations of Sections 6 and 11, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt and is **ORDERED** immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

Let a copy of this decision be furnished to the Director of the Bureau of Corrections for immediate implementation. He is also directed to report to this Court within five (5) days from receipt of this decision on the action he has taken.

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

---

[43] Id.

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

(On official business)
FRANCIS H. JARDELEZA
Associate Justice

ROSMARI D. CARANDANG
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.

LUCAS P. BERSAMIN
Chief Justice

A09