



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

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

**G.R. No. 238174**

Present:

PERALTA, \* *C.J.*,  
 PERLAS-BERNABE, *J.*,  
*Chairperson*,  
 REYES, A., JR.,  
 INTING, and  
 DELOS SANTOS, *JJ.*

- versus -

**GAIDA KAMAD y PAKAY,**  
 Accused-Appellant.

Promulgated:

05 FEB 2020

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**DECISION**

**REYES, A., JR., J.:**

Before the Court is a Notice of Appeal<sup>1</sup> assailing the Decision<sup>2</sup> dated October 26, 2017 of the Court of Appeals (CA) in CA-G.R. CR. No. 08077, which affirmed the Decision<sup>3</sup> dated January 27, 2016 of the Regional Trial Court (RTC) of Taguig City, Branch 70, in Criminal Case No. 17025-D, finding Gaida Kamad y Pakay (accused-appellant) guilty beyond reasonable doubt of violation of Section 5,<sup>4</sup> Article II of Republic Act (R.A.) No. 9165,

\* Designated additional Member per Raffle dated November 25, 2019.

<sup>1</sup> CA rollo, pp. 122-123.

<sup>2</sup> Penned by Associate Justice Ramon Paul L. Hernando (now a Member of this Court), with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez (now a Member of this Court), concurring; id. at 104-117.

<sup>3</sup> Rendered by Presiding Judge Louis P. Acosta; id. at 67-75.

<sup>4</sup> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x

*Reyes*

otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.” The accused-appellant was meted the penalty of Life Imprisonment and a Fine of Five Hundred Thousand Pesos (₱500,000.00).

### The Facts

In an Information<sup>5</sup> dated March 8, 2010, the accused-appellant was charged with Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

That on or about the 5<sup>th</sup> day of March, 2010 in the City of Taguig[,] Philippines and within the jurisdiction of this Honorable Court[,] the above-named accused, without being authorized by law did then and there willfully, unlawfully and feloniously sell, deliver and give away to a poseur[-]buyer one (1) heat[-]sealed transparent plastic sachet containing zero point zero three (0.03) gram of white crystalline substance, commonly known as “shabu,” a dangerous drug, in violation of the above-cited law.

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

### Version of the Prosecution

Around 10:00 a.m. of March 5, 2010, a confidential informant arrived at the Anti-Illegal Drugs Station in Taguig City, and reported the selling of illegal drugs in Cagayan de Oro Street, Quiapo Dos, Maharlika Village, Taguig City by the accused-appellant.<sup>7</sup>

Police Officer 2 Benedict Balas (PO2 Balas) verified the information given by the confidential informant and learned that the name of the accused-appellant is Gaida Kamad alias “Mamang.” Team Leader Police Chief Inspector Porfirio Calagan (PCI Calagan) formed a team to conduct a buy-bust operation against the accused-appellant. During the briefing, PO2 Balas was designated as the poseur-buyer, and was given two marked ₱1,000.00 bills, one marked ₱500.00 bill and one marked ₱100.00 bill to be used as buy-bust money.<sup>8</sup>

PO2 Vergelio Del Rosario, Jr. (PO2 Del Rosario) prepared the Pre-operation Report and Coordination Form which were sent to the Philippine Drug Enforcement Agency-Metro Manila Regional Office and the Southern Police District.<sup>9</sup>

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<sup>5</sup> CA *rollo*, pp. 13-14.

<sup>6</sup> Id. at 13.

<sup>7</sup> Id. at 88.

<sup>8</sup> Id. at 88-89.

<sup>9</sup> Id. at 89.

*Meyer*

Around 1:30 p.m., the buy-bust team composed of PO2 Balas, PCI Calagan, PO2 Richard Sambua and one PO2 Laurel, together with the confidential informant, proceeded to Maharlika Village on board a white Mitsubishi taxicab. Upon reaching the target area, PO2 Balas and the confidential informant alighted from the vehicle and walked to Cagayan de Oro Street.<sup>10</sup>

While they were walking, they passed by an old lady whom the confidential informant introduced to PO2 Balas as the seller.<sup>11</sup>

The accused-appellant asked PO2 Balas how much *shabu* he would be buying. PO2 Balas answered that he would be purchasing ₱2,000.00 worth of *shabu*. The accused-appellant replied that she did not have much *shabu* at the time since her supply has not been delivered yet but told PO2 Balas that if he really needs it, she has ₱500.00 worth of *shabu*.<sup>12</sup> She then took the *shabu* out of her pants and showed it to PO2 Balas.<sup>13</sup>

PO2 Balas told the accused-appellant that he would buy the *shabu*. After he handed over the marked ₱500.00 bill to the accused-appellant, the latter took the money and put it inside her pocket.<sup>14</sup>

PO2 Balas scratched his head as a pre-arranged signal to his teammates that the sale had already been consummated. He then introduced himself as a police officer and proceeded to arrest the accused-appellant after apprising her of her constitutional rights and the cause of her arrest. After marking the dangerous drugs bought and confiscated by him, he asked the accused-appellant to empty her pockets and so he was able to recover the ₱500.00 marked money used for the buy-bust operation.<sup>15</sup>

After the accused-appellant was arrested, a commotion took place in the area with some persons throwing stones on the police officers and their parked taxicab. This prompted them to immediately bring the accused-appellant to the police station where she and the confiscated items were turned over to the investigator, PO2 Del Rosario (PO2 Del Rosario).<sup>16</sup>

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<sup>10</sup> Id. at 16 and 89.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 16-17 and 89.

<sup>14</sup> Id. at 17 and 90.

<sup>15</sup> Id.

<sup>16</sup> Id.

*Meyer*

Thereafter, PO2 Del Rosario prepared the Request for Laboratory Examination and the other documents necessary for the inventory. PO2 Balas brought the accused-appellant to the Philippine National Police Crime Laboratory in Makati City for examination.<sup>17</sup>

The examination of the confiscated drugs, conducted by Forensic Chemist Police Chief Inspector Abraham Tecson, yielded a positive result for the presence of methamphetamine hydrochloride, also known as *shabu*.<sup>18</sup>

### Version of the Defense

The accused-appellant vehemently denied the charge against her and claimed that no buy-bust operation took place on the said date.<sup>19</sup>

According to the accused-appellant, she is a 60-year-old illiterate who is living alone in Taguig City (at the time of the arrest). She worked as a water vendor in her neighborhood and, on the day of the arrest, she was outside her house and was refilling a drum that was being used at a nearby public restroom. While sitting on her chair, three unidentified armed men arrived and frisked her. They asked her if she saw someone running and when she answered “no”, they frisked her again and instructed her to go with them. They then dragged her to an alley and brought her to the police station where she found out that they were police officers.<sup>20</sup>

At the police station, the police officers asked for her name and then placed the items in front of her. She was then incarcerated without being informed of the accusations against her.<sup>21</sup>

The RTC, in its Decision<sup>22</sup> dated January 27, 2016, found the accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentenced her to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The dispositive portion of the RTC Decision reads:

**WHEREFORE**, in the premises, the [accused-appellant] is hereby found **GUILTY** beyond reasonable doubt of selling without any authority 0.03 gram of Methylamphetamine Hydrochloride or “shabu”, a dangerous drug, in violation of Sec. 5, Article II of R.A. [No.] 9165 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00)**.

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<sup>17</sup> Id. at 17 and 90-91.

<sup>18</sup> Id. at 107.

<sup>19</sup> Id. at 108.

<sup>20</sup> Id. at 52 and 108.

<sup>21</sup> Id.

<sup>22</sup> Id. at 67-75.

*Meyer*

Meanwhile, pursuant to Section 21 of [R.A. No.] 9165, Magella Monashi, Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA), or any of his authorized representative is hereby ordered to take charge and to have custody of the “shabu”, subject matter of this case, or proper disposition.

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

Costs against the accused.

SO ORDERED.<sup>23</sup> (Emphases in the original)

On appeal,<sup>24</sup> the CA found the grounds relied upon by the accused-appellant devoid of merit and affirmed the ruling of the RTC. In its Decision<sup>25</sup> dated October 26, 2017, the CA disposed as follows:

**ACCORDINGLY**, the appeal is **DENIED**. The assailed Decision dated January 27, 2016 of the [RTC], Branch 70 of Taguig City in Criminal Case No. 17025-D which found [the accused-appellant] guilty beyond reasonable doubt of a violation of Section 5, Article II of [R.A.] No. 9165 is **AFFIRMED**.

**SO ORDERED.**<sup>26</sup> (Emphases in the original)

Hence, this appeal.

The issue for the Court’s resolution is whether or not the accused-appellant’s conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, should be upheld.

### **Ruling of the Court**

The appeal is meritorious.

In order to sustain a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the law demands the establishment of the following elements: (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. 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>27</sup>

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<sup>23</sup> Id. at 23.

<sup>24</sup> Id. at 24.

<sup>25</sup> Id. at 104-117.

<sup>26</sup> Id. at 116.

<sup>27</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017).



The accused-appellant maintains that she should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21, Article II of R.A. No. 9165.

In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640,<sup>28</sup> are material as their compliance affects the *corpus delicti* which is the dangerous drug itself and warrants the identity and integrity of the substances and other evidence that are seized by the apprehending officers. Specifically, Section 21, Article II, as amended, provides the following rules:

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

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same** in the presence of the accused or the 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 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 and custody over said items.

x x x x<sup>29</sup> (Emphasis ours)

It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or

<sup>28</sup> Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF THE REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" which took effect on August 7, 2014.

<sup>29</sup> R.A. No. 10640, Section 1 amended R.A. No. 9165, Section 21.

*Meyer*

counsel, plus two other witnesses, particularly: (1) an elected public official, and (2) a representative of the National Prosecution Service (Department of Justice [DOJ]) or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the original Section 21<sup>30</sup> of R.A. No. 9165 could be impracticable for the law enforcers' compliance,<sup>31</sup> and that the stringent requirements could unduly hamper their activities towards drug eradication. The amendment then substantially included the saving clause that was actually already in the Implementing Rules and Regulations (IRR) of the former Section 21, indicating that non-compliance with the law's 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 seizures and custody over confiscated items.

The Court reiterates though that failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its non-compliance has serious effects and is fatal to the prosecution's case. As the Court declared in *People v. Que*:<sup>32</sup>

*People v. Morales* explained that "failure to comply with paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*." It "produce[s] doubts as to the origins of the [seized paraphernalia]."

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Noncompliance with them tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed. x x x.<sup>33</sup> (Citations omitted)

In the same vein, the Court, in *People v. Mendoza*,<sup>34</sup> explained that the

<sup>30</sup> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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[.]

x x x x

<sup>31</sup> See *People of the Philippines v. Ramoncito Cornel y Asuncion*, G.R. No. 229047, April 16, 2018.

<sup>32</sup> G.R. No. 212994, January 31, 2018, 853 SCRA 487.

<sup>33</sup> Id. at 503-504.

<sup>34</sup> 736 Phil. 749 (2014).

*Meyer*

presence of these witnesses would not only preserve an unbroken chain of custody but also prevent the possibility of tampering with or “planting” of evidence, *viz.*:

Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A.] No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. x x x<sup>35</sup>

Since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its IRR should apply, to wit:

(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 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[.]

Under the law, a physical inventory and photograph of the items that were purportedly seized from the accused should have been made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. The entire procedure must, likewise, be made in the presence of the accused or his representative or counsel and three witnesses, namely: (1) an elected public official; (2) a representative from the DOJ; and (3) a representative from the media. These individuals shall then be required to sign the copies of the inventory and be given a copy thereof.

Here, as culled from the records and highlighted by the testimonies of the police officers themselves, none of the required witnesses was present during the inventory stage. Neither was it shown nor alleged by the police

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<sup>35</sup> Id. at 764.

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officers that earnest efforts were made to secure the attendance of these witnesses. To recapitulate, the tip was received around 10:00 a.m. of March 5, 2010 and at 1:30 p.m. of the same day, the police officers proceeded to the target area to conduct surveillance. Given the time of the surveillance and arrest, the police officers had more than enough time to secure the attendance of the witnesses had they really wanted to.

In *People v. Reyes*,<sup>36</sup> the Court enumerated certain instances when absence of the required witnesses may be justified, *viz.*:

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 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.<sup>37</sup> (Citation omitted)

The above-ruling was again reiterated by the Court in *People of the Philippines v. Vicente Sipin*,<sup>38</sup> where it provided additional grounds that would serve as valid justification for the relaxation of the rule on mandatory witnesses, *viz.*:

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 prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.<sup>39</sup> (Citation omitted and emphasis deleted)

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<sup>36</sup> *People v. Reyes*, G.R. No. 219953, April 23, 2018, 862 SCRA 352.

<sup>37</sup> *Id.* at 367.

<sup>38</sup> G.R. No. 224290, June 11, 2018.

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

*Reyes*

The failure of the police officers to provide a reasonable excuse or justification for the absence of these witnesses clearly magnified the lack of concrete effort on their part to comply with the requirements of Section 21. The absence of these witnesses constitutes a substantial gap in the chain of custody and raises doubts on the integrity and evidentiary value of the items that were allegedly seized from the accused-appellant. It militates against a finding of guilt beyond reasonable doubt.

The law deserves faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with. It is only for justifiable and unavoidable grounds that deviations from the required procedure is excused.

In *People v. Relato*,<sup>40</sup> the Court explained:

In a prosecution of the sale and possession of methamphetamine hydrochloride [*shabu*] prohibited under [R.A.] No. 9165, the State not only carries the heavy burden of proving the elements of the offense x x x, but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt. x x x.<sup>41</sup> (Citations omitted)

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor lapses or deviations from the prescribed procedure are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

In the recent case of *People of the Philippines v. Lim*,<sup>42</sup> the Court, speaking through now Chief Justice Diosdado M. Peralta, reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the presence of the required witnesses was made. In addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1(A.1.10) of the Chain of Custody IRR should be enforced as a mandatory policy. The

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<sup>40</sup> 679 Phil. 268 (2012).

<sup>41</sup> Id. at 277-278.

<sup>42</sup> G.R. No. 231989, September 4, 2018.

*Meyer*

pertinent portions of the Decision reads:

To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Sections 1 (A.1.10) of Chain of Custody [IRR] directs:

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, the following should henceforth be enforced as a mandatory policy:

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.<sup>43</sup> (Citations omitted)

Simply put, the prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying their failure to comply with the requirements stated therein. Even the presumption as to the regularity in the performance by police officers of their official duties cannot prevail

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<sup>43</sup> Id.

*Meyer*

when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*<sup>44</sup> is instructive on the matter:

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of x x x justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."

As a final note, we reiterate our past rulings calling upon the authorities "to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society." The need to employ a more stringent approach to scrutinizing the evidence of the prosecution – especially when the pieces of evidence were derived from a buy-bust operation – "redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."<sup>45</sup> (Citations omitted)

The prosecution's failure to justify its non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to their case.

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<sup>44</sup> 686 Phil. 1024 (2012).

<sup>45</sup> Id. at 1053-1054.

*Meyer*

It is mandated by no less than the Constitution<sup>46</sup> that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People v. Hilario*,<sup>47</sup> the Court ruled that:

The prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.<sup>48</sup> (Citations omitted)

All told, the Court finds the errors committed by the apprehending team as sufficient to cast serious doubts on the guilt of the accused-appellant. Absent faithful compliance with Section 21, Article II of R.A. No. 9165, which is primarily intended to, *first*, preserve the integrity and evidentiary value of the seized items in drugs cases, and *second*, to safe guard accused persons from unfounded and unjust convictions, an acquittal becomes the proper recourse.

**WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision dated October 26, 2017 of the Court of Appeals in CA-G.R. CR. No. 08077, which affirmed the Decision dated January 27, 2016 of the Regional Trial Court of Taguig City, Branch 70, in Criminal Case No. 17025-D finding accused-appellant Gaida Kamad y Pakay guilty of violating Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accused-appellant Gaida Kamad y Pakay is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY RELEASE** the accused-appellant from detention, unless she is being lawfully held in custody for any other reason, and to inform this Court of his action hereon within five (5) days from receipt of this Decision.

Let entry of judgment be issued.

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<sup>46</sup> Article III, Section 14(2) of the Constitution mandates:  
Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

<sup>47</sup> G.R. No. 210610, January 11, 2018, 851 SCRA 1.

<sup>48</sup> Id. at 30.




**SO ORDERED.**

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

**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
Chief Justice


  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson

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

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

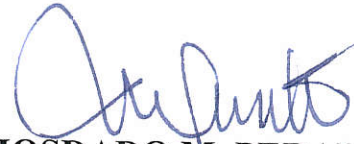
**A T T E S T A T I O N**

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.

  
**ESTELA M. PERLAS-BERNABE**  
Senior 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.



**DIOSDADO M. PERALTA**  
Chief Justice

