



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 August 2021** which reads as follows:*

“G.R. No. 230234 (*People of the Philippines v. Rowena Lumangka y Abubakar*). – On appeal¹ is the June 10, 2016 Decision² of the Court of Appeals (CA/appellate court) in CA-G.R. CR-HC No. 05873, affirming the September 20, 2012 Decision³ of the Regional Trial Court (RTC/trial court), Branch 259 of Parañaque City, which found accused-appellant Rowena Lumangka y Abubakar (accused-appellant/Lumangka) guilty beyond reasonable doubt of violation of Section 5 (illegal sale), Article II of Republic Act No. (RA) 9165, also known as the Comprehensive Dangerous Drugs Act of 2002.

The facts, as alleged by the prosecution, are as follows:

On May 23, 2011, Intelligence Officer 1 (IO1) Grace Tactac (IO1 Tactac) of the Philippine Drug Enforcement Agency (PDEA) held a briefing for the conduct of a buy-bust operation based on information from a confidential informant about the illegal drug activities of an alias “Weng” in Parañaque City.⁴ The informant had allegedly closed a deal with Weng for the purchase of five (5) grams of *shabu* worth ₱30,000.00.⁵ IO1 Tactac was designated as poseur buyer, and IO1 Crisanto Lorilla (IO1 Lorilla) was her immediate backup.⁶ IO1 Tactac prepared the buy bust money comprised of a genuine ₱500 bill with her initials “GLT” on the lower end and some fake money.⁷

¹ *Rollo*, pp. 16-18.

² *Id.* at 2-15.

³ *Records*, pp. 569-576.

⁴ *TSN*, May 2, 2012, pp. 6-11.

⁵ *Id.*

⁶ *TSN*, May 2, 2012, p. 9.

⁷ *Id.* at 11.

After coordinating with the Southern Police District, the buy bust team proceeded to *Puregold* supermarket along Sucat, Parañaque City and waited for Weng.⁸ However, Weng informed the informant she could not come because of an important matter and told them to come back the following day.⁹

The following day, on May 24, 2011, the buy bust team left their office at 6:00 A.M. to go to the same *Puregold* supermarket.¹⁰ When they arrived in the area, the informant contacted Weng, and after three minutes, Weng arrived.¹¹ The informant then introduced IO1 Tactac to Weng as the buyer.¹² Afterwards, Weng handed to IO1 Tactac one heat-sealed transparent plastic sachet containing white crystalline substance, which the latter examined and placed in her pocket before giving Weng a paper bag containing the marked ₱500 bill and fake bills as payment.¹³ IO1 Lorilla and the rest of the buy-bust team arrived after IO1 Tactac made the pre-arranged signal of calling IO1 Lorilla on the phone.¹⁴ Weng was then arrested by IO1 Lorilla.¹⁵

Weng, later identified to be accused-appellant Lumangka,¹⁶ was brought, together with the seized items, to the PDEA Headquarters in Brgy. Pinayahan, Quezon City, which was a two to three-hour drive from the scene of the crime.¹⁷ IO1 Tactac later mentioned that it was a one and a half hour travel time during her cross-examination.¹⁸ Upon arrival, team leader IO3 Billy Viray (IO3 Viray) called for a barangay official, and representatives from the media and the Department of Justice (DOJ).¹⁹ Brgy. Kagawad Jose Ruiz and media representative Jimmy Mendoza arrived at the PDEA office and were present when the buy-bust team marked, inventoried, and photographed the seized item, but there was no representative from the DOJ.²⁰ IO1 Tactac personally marked the sachet containing the white crystalline substance with her initials and the date when the same was seized, the exact marking being "EXH A GLT-05-24-11."²¹ The inventory was signed by the barangay official and media representative.²² PDEA photographer Charlie Magno took photographs of the events.²³

IO3 Viray then prepared a request for laboratory examination, which was brought by IO1 Tactac, together with the items recovered, to the PDEA

⁸ Id. at 14-15.

⁹ Id. at 20-21.

¹⁰ Id. at 23.

¹¹ Id. at 24-25.

¹² Id. at 25-26.

¹³ Id. at 28-29.

¹⁴ Id. at 29-30.

¹⁵ Id. at 30.

¹⁶ Id. at 31-32.

¹⁷ Id. at 30.

¹⁸ TSN, June 7, 2012, p. 11.

¹⁹ TSN, May 2, 2012, p. 31.

²⁰ Id. at 31-34.

²¹ Id. at 34.

²² Id. at 38-41.

²³ Id. at 40-41.

Laboratory Service.²⁴ After receiving the request and specimen, which was placed in a heat-sealed transparent plastic marked as “EXH A GLT 05-24-11,”²⁵ PDEA Chemist Shaila Seville (PDEA Chemist Seville) immediately conducted the examination.²⁶ Both the screening and the confirmatory tests showed that the substance brought for examination was positive for *Methamphetamine Hydrochloride* or colloquially known as *shabu*,²⁷ as shown in the Chemistry Report No. PDEA-DD011-195²⁸ signed by PDEA Chemist Seville. Thereafter, she sealed the plastic sachet with markings and turned it over to their evidence custodian, Majela Muñasque.²⁹ PDEA Chemist Seville claimed that she retrieved the evidence from the evidence custodian in the same condition as when she gave it to the latter.³⁰

On June 13, 2011, an Information³¹ was filed charging Lumangka with a violation of Section 5, Article II of RA 9165. The accusatory portion thereof reads:

That on or about the 24th day of May 2011, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) heat-sealed transparent plastic sachet with markings “EXH A GLT 05-24-11” containing white crystalline substance weighing 4.6812 grams to Poseur Buyer 101 [sic] Grace L. Tactac, which content of said plastic sachet when tested was found positive for Methamphetamine hydrochloride (*shabu*), a dangerous drug.

CONTRARY TO LAW.³²

Upon her arraignment on July 6, 2011, Lumangka pleaded not guilty to the offense charged against her.³³

In her defense, Lumangka testified that on May 23, 2011 at around 2:00-2:30 P.M., she was arranging soda bottles inside her store adjacent to her house when six armed men in civilian clothes entered while pointing their guns at her.³⁴ She was with Abdullah Mamalumpong (Mamalumpong) and Bai Sarah Usman (Usman) at that time.³⁵ When Lumangka inquired what the unidentified men were doing in her house, they ordered her not to ask questions. She was then brought to Sto. Niño church close to her house and shoved inside a white van parked nearby.³⁶ While inside the van, one of the

²⁴ Id. at 44-46.

²⁵ TSN, November 23, 2011, pp. 7-10.

²⁶ Id. at 12.

²⁷ Id. at 12-15.

²⁸ Records, p. 17.

²⁹ TSN, November 23, 2011, p. 15.

³⁰ Id. at 16-17.

³¹ Records, p. 1.

³² Id.

³³ Id. at 29-31.

³⁴ TSN, August 22, 2012, pp. 5-7.

³⁵ Id. at 8.

³⁶ Id. at 9.

men asked her to remove her jewelry, and another man slapped her when she did not follow his orders to reveal the location of the illegal drugs that were allegedly in her possession.³⁷ She was taken to the PDEA Headquarters in Pinyahan, Quezon City and was detained in a prison cell.³⁸ She did not anymore ask why she was being detained, and denied knowing IO1 Tactac.³⁹ When Lumangka learned about the charges against her, she demanded a preliminary investigation,⁴⁰ and submitted her own evidence, which included the affidavit⁴¹ of Carlito Cayubit (Cayubit), joint affidavit⁴² of Mamalumpong, Usman and Mohimina Lumangka (Mohimina), as well as her own counter-affidavit,⁴³ to refute the allegations against her.⁴⁴

In the aforementioned joint affidavit submitted before the Office of the City Prosecutor,⁴⁵ Usman testified that he saw Lumangka being boarded on a white and maroon van.⁴⁶ Mamalumpong and Usman also asserted that they were with Lumangka inside the house from the time the men arrived until Lumangka was forcibly taken outside by the armed men.⁴⁷ In the same affidavit, Mohimina stated that in the evening of May 23, 2011, her sister, accused-appellant Lumangka, called and told her that the men who arrested her were asking for ₱200,000.00 for her release.⁴⁸ Negotiations with a certain Andy was made until the amount was lowered to ₱50,000.00 to be brought to the PDEA office in Quezon City at or before 12:00 noon the following day.⁴⁹ When they were ready with the money, they called up Andy, and they were told to proceed to the PDEA office. At the stated meeting place, a fat man approached them and took the ₱50,000.00.⁵⁰ The man promised that Lumangka would be released the following day, but she was never set free.⁵¹

It must be noted that neither Usman, Mamalumpong, nor Mohimina testified during trial before the RTC.

On cross-examination, Lumangka testified that on May 24, 2011, while she was at the PDEA headquarters, IO1 Tactac fetched her from her detention cell and escorted her to a room where she was shown a plastic sachet of *shabu* and a ₱500 bill.⁵² She insisted during re-direct examination that this was the

³⁷ Id. at 9-10.

³⁸ Id. at 11-12.

³⁹ TSN, August 22, 2012, pp. 12-13.

⁴⁰ TSN, August 22, 2012, p. 14.

⁴¹ Records, p. 562.

⁴² Id. at 565-566.

⁴³ Id. at 563-564.

⁴⁴ TSN, August 22, 2012, pp. 14-20.

⁴⁵ Records, pp. 565-566.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² TSN, August 22, 2012, pp. 26-27.

first time she saw IO1 Tactac and that she was apprehended on May 23, 2011 and not May 24, 2011.⁵³

The defense also presented witness Cayubit, who testified that Lumangka is his neighbor, and that on May 23, 2011, he was drinking with some friends beside Lumangka's house when several men suddenly entered the former's house.⁵⁴ After about three minutes, the men went out of the house with Lumangka.⁵⁵ He stated that he did not witness a buy bust operation against Lumangka on May 23, 2011.⁵⁶

Ruling of the Regional Trial Court:

After trial, the RTC rendered a Decision⁵⁷ dated September 20, 2012, finding Lumangka guilty beyond reasonable doubt of the felony charged against her. The trial court ruled that denial or frame up is a standard defense ploy in most prosecutions for violation of RA 9165, and as such it has been viewed by the courts with disfavor for it can just as easily be concocted.⁵⁸ Without proof of any intent on the part of the police officers to falsely ascribe to Lumangka the commission of the crime, the presumption of regularity in the performance of official duty prevails over the bare denials and self-serving claims of Lumangka that she had been framed up.⁵⁹

With regard to the preservation of the integrity of evidence, the trial court ruled that the presence of slight infractions or nominal deviations in the handling of evidence should not exculpate an otherwise guilty defendant.⁶⁰ It also ruled that Lumangka bears the burden of showing that the evidence was tampered with, or that the arresting officers or the prosecution were impelled by any ill feeling or motive against her, which she has failed to do so in this case.⁶¹

The dispositive portion of the trial court's Decision reads:

WHEREFORE, premises considered, the court finds accused ROWENA ABUBAKAR LUMANGKA in Criminal Case No. 11-0621 for Violation of Section 5, Article II of RA 9165, GUILTY beyond reasonable doubt and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ONE MILLION PESOS (Php 1,000,000.00).

Further it appearing that accused ROWENA ABUBAKAR LUMANGKA is detained at the Parañaque City Jail and considering the penalty imposed, the OIC-Branch Clerk of Court is hereby directed to prepare the *Mittimus* for her

⁵³ Id. at 30.

⁵⁴ TSN, June 27, 2012, pp. 4-6.

⁵⁵ Id. at 7.

⁵⁶ Id. at 14.

⁵⁷ Records, pp. 569-576.

⁵⁸ Id. at 573.

⁵⁹ Id.

⁶⁰ Id. at 575.

⁶¹ Id.

immediate transfer from the Parañaque City Jail to the Women's Correctional Facility, Mandaluyong City.

The specimen is forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.

SO ORDERED.⁶²

Aggrieved, Lumangka appealed to the CA claiming that the RTC erred in convicting her despite the fact that the prosecution failed to prove her guilt beyond reasonable doubt. She alleged that the police officers failed to observe the proper procedure laid down in Section 21, Article II of RA 9165.⁶³ During the marking and inventory of the seized item, no representative from the DOJ was present, and that the marking was not made immediately after Lumangka's arrest, rather, the same was made at the barangay hall of Pinyahan, Quezon City.⁶⁴

Ruling of the Court of Appeals:

On June 10, 2016, the CA rendered a Decision⁶⁵ denying Lumangka's appeal and affirming the RTC ruling.⁶⁶ The appellate court held that failure to strictly comply with Sec. 21(1), Article II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible and what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items.⁶⁷ In ruling that there was no gap in the chain of custody, the appellate court explained that "immediate confiscation" has no exact definition, meaning that the first link in the chain of custody, which is the marking of the seized items, contemplates even marking at the nearest police station or office of the apprehending team.⁶⁸ Moreover, it affirmed the RTC's ruling that Lumangka's defense of denial and frame up cannot be given credence over the positive assertions of the prosecution witnesses, and that the presumption of regularity in the performance of duty must be upheld absent any proof of any intent on the part of the police authorities to falsely impute such crime to the accused.⁶⁹

The dispositive portion of the CA Decision reads as follows:

WHEREFORE, the Decision dated September 20, 2012 of the Regional Trial Court of Parañaque City, Branch 259, convicting the accused-appellant ROWENA LUMANGKA y ABUBAKAR for violation of Section 5, Article II

⁶² Id. at 576.

⁶³ *Rollo*, p. 8.

⁶⁴ *CA rollo*, pp. 71-72.

⁶⁵ *Rollo*, pp. 2-15.

⁶⁶ Id.

⁶⁷ Id. at 12.

⁶⁸ Id. at 12-13.

⁶⁹ Id. at 13-14.

of Republic Act No. 9165 and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P1,000,000.00 is hereby AFFIRMED.

SO ORDERED.⁷⁰

Hence, the present appeal before this Court.

Our Ruling

There is merit in this appeal.

Lumangka's defense of denial and frame up failed to overturn the presumption of regularity in the performance of the arresting officers' duties.

Factual findings of the trial court, especially those which revolve around matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings.⁷¹ The evaluation of the credibility of witnesses and their testimonies are best undertaken by the trial court because of its unique opportunity to observe the witnesses' deportment, demeanor, conduct and attitude under grueling examination.⁷² Such findings of the trial court are even more convincing when affirmed by the CA, as in this case.

This Court finds that the RTC correctly held that denial and frame up are a common defense ploy in dangerous drug cases,⁷³ and hence, the credibility of the witnesses for the defense must be scrutinized more strictly relative to the testimony of the arresting officers, who are presumed to have conducted their duties in a regular and ordinary manner. Thus, absent proof of ill intent on the part of the arresting officers to falsely impute the crime charged against the accused, the defense of denial and frame up must yield to the presumption of regularity in the performance of duty.

Lumangka's self-serving testimonies without any other corroborating evidence cannot overcome the positive allegations of the arresting officers that were corroborated by the other evidence on record. This, coupled with the presumption of regularity on the part of the arresting officers, would lead this Court to believe that Lumangka's story of being a victim of a frame-up is nothing but a mere concoction; a desperate attempt to escape the clutches of the law.

⁷⁰ Id. at 14-15.

⁷¹ *People v. Bayan*, 741 Phil. 716 (2014).

⁷² Id.

⁷³ *People v. Tapugay*, 753 Phil. 570 (2015).

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Furthermore, it must be noted that the RTC correctly observed that Lumangka's own sister, Mohimina, did not even take the witness stand to corroborate the testimony of Lumangka.⁷⁴ The statements of Mohimina regarding the alleged frame-up were only submitted during the preliminary investigation before the Office of the Prosecutor, which found probable cause and resolved to file the Information against Lumangka with the RTC. It is indeed strange that Mohimina, Lumangka's flesh and blood, would not even take the opportunity to come to her sister's defense during the trial proper, especially if she truly believed that her sister was the victim of a terrible injustice at the hands of State authorities.

Therefore, we find no reversible error in the rulings of the RTC and the CA that Lumangka's defense of denial and frame up holds no water.

Lumangka was caught in a buy-bust operation that happened on May 24, 2011.

Section 5, Article II of RA 9165 provides that to successfully prosecute the offense of Sale of Illegal Drugs, the following elements must be satisfied: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.⁷⁵ In a buy-bust operation, the receipt by the poseur-buyer of the dangerous drug and the corresponding receipt by the seller of the marked money consummate the illegal sale of dangerous drugs.⁷⁶

As applied in this case, all the elements for the Illegal Sale of Dangerous Drugs are present. The testimonies of the PDEA agents, coupled with the documentary and object evidence, demonstrated that Lumangka was caught selling *shabu* to IO1 Tactac who acted as the poseur buyer. The poseur buyer, IO1 Tactac, positively identified that the sale took place and that Lumangka alias "Weng" was the seller, *to wit*:

Q: What happened now upon arrival of this alias Weng, the target person?

A: I was introduced by our confidential informant to Weng.

Q: By the way, Madam Witness, where were you positioned at that time when this alias Weng arrived?

A: Beside of Puregold.

Q: But that was the agreed place beside Puregold?

A: Yes, Ma'am.

Q: And how did Weng approach you?

A: She walked towards us and he saw the confidential informant.

⁷⁴ Records, pp. 573-574.

⁷⁵ *People v. Addin*, G.R. No. 223682, October 9, 2019.

⁷⁶ *Id.*

- Q: Do you still recall what the color of the target person, Weng?
A: I remember she was wearing white t-shirt and pants.
- Q: So, what transpired next?
A: After I was introduced that I am the buyer then she gave me the items, the shabu.
- Q: How were you introduced by the confidential informant to this Weng?
A: I was introduced as the buyer of the item.
- Q: What about the amount, did the confidential informant mention about the amount of the shabu you will be buying from [sic] this alias Weng?
A: No, Ma'am.
- Q: How much were you going to buy from this Alias Weng?
A: Thirty thousand pesos (P 30,000.00), Ma'am.
- Q: Worth of
A: 5-grams of shabu.
- Q: But did Weng already know the quantity and the price that you will be buying from her?
A: Yes, Ma'am. That was what [sic] we agreed upon on May 23, 2011.
- Q: What happened after that?
A: After she gave me the item, I looked at it and then opened the same.
- Q: What was the item handed over to you by this alias Weng?
A: Shabu, Ma'am.
- Q: Where was this shabu placed [sic], in particular?
A: Heat-sealed transparent plastic sachet, Ma'am.
- Q: And how much did you give to alias Weng?
A: A paper bag of boodle money and the five hundred peso bill.
- Q: Do you have with you the paper bag?
A: No, Ma'am.
- Q: Only one (1) heat-sealed transparent plastic sachet?
A: Yes, Ma'am.
- Q: What happened now to that heat-sealed transparent plastic sachet?
A: I examined it and I put it in my pocket.
- Q: What transpired next?
A: I handed her over the paper bag and then I executed the pre-arranged signal which is I am going to [sic] make a miss call to my back up, Agent Lorilla.
- Q: Where was this alias Weng when you made the pre-arranged signal?
A: She was beside me.⁷⁷

⁷⁷ TSN, May 2, 2012, pp. 25-29.

Lumangka's receipt of the pre-marked ₱500.00 bill consummated the sale of the illegal drug. Hence, based on the evidence, the sale was consummated and the confiscated item, the *corpus delicti*, was presented in court to prove the same.

However, as will be discussed below, there are glaring lapses in the chain of custody that would cast doubt on the integrity of the evidence presented in court.

The arresting officers failed to strictly comply with the procedures laid down by law and jurisprudence regarding the chain of custody in Dangerous Drugs cases, compromising the integrity of the evidence.

While it may be true that an Illegal Sale of Dangerous Drugs indeed happened on May 24, 2011 and that Lumangka's defense is nothing more than a futile exercise in fictional storytelling, the records would show that the arresting officers failed to strictly observe the procedure in relation to the seizure and custody of dangerous drugs or the chain of custody; which is found in Section 21(1), Article II of RA 9165, prior to its amendment by RA 10640, since the transaction in this case transpired on May 24, 2011, *viz.*:

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

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 persons from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)

In relation to this, Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 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[.] (Emphasis supplied)

Section 21, Article II of RA 9165, prior to its amendment by RA 10640 on July 15, 2014,⁷⁸ mandates that the marking, photographing and inventory of the seized items be done in the presence of the accused or their representative or counsel, and three (3) essential witnesses, namely: 1) representative from the media, 2) representative from the DOJ, and 3) any elected public official. Notably, in this case, the PDEA agents only managed to secure the presence and signature of a representative from the media and an elected official to serve as witnesses. No explanation was provided as to why the presence of a representative from the DOJ was not secured.

To stress, the prosecution bears the burden to justify the arresting officers' non-compliance based on justifiable grounds, provided that the integrity and evidentiary value of the seized items have been properly preserved. Simply put, absent any justifiable grounds for non-compliance with the rules, the chain of custody in handling the seized item should not have been broken.

It is important to note that this Court, in the recent case of *People v. Lim*,⁷⁹ underscored the significance of the presence of the three key witnesses, specifically a representative from the DOJ, the media, and any elected public official, at the time of the physical inventory and the taking of photographs of the confiscated items. In case the said representatives are absent, this Court held that:

[I]t must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s 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 [from] the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] 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 an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers.

⁷⁸ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

⁷⁹ G.R. No. 231989, September 4, 2018.

who face[d] 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.⁸⁰ (Underscoring supplied)

Aside from this, jurisprudence states that there should be evidence to show that earnest efforts were employed by the prosecution in order to secure the attendance of the necessary witnesses in accordance with Section 21, Article II of RA 9165.⁸¹ The case of *Ramos v. People*⁸² is instructive:

[I]t 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 [No.] 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 full 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 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.⁸³ (Underscoring in the original)

From the foregoing, it should be emphasized that “in the event that the presence of the essential witnesses was not obtained, the prosecution must establish not only the reasons for their absence, but also the fact that serious and sincere efforts were exerted in securing their presence. Failure to disclose the justification for non-compliance with the requirements and the lack of evidence of serious attempts to secure the presence of the necessary witnesses result in a substantial gap in the chain of custody of evidence that shall adversely affect the authenticity of the prohibited substance presented in court.”⁸⁴

In the instant case, the prosecution failed to at least allege and then prove any specific reason to explain the absence of the representative from the DOJ during the taking of inventory and photographs. Nowhere in the records would show that any attempt to justify the absence of one of the key witnesses,

⁸⁰ Id.

⁸¹ *People v. Addin*, supra note 75.

⁸² G.R. No. 233572, July 30, 2018.

⁸³ Id.

⁸⁴ *People v. Vistro*, G.R. No. 225744, March 6, 2019.

especially given that the PDEA agents had more than sufficient time to plan the buy-bust operation, which was even delayed for one whole day. Surely, while planning, the PDEA agents could have exerted efforts to request for the attendance of the required witnesses during the inventory. If nobody was available, the said agents could have adequately explained it on paper or even during the trial of the case, which they utterly failed to do.

Moreover, it truly baffles this Court why the buy bust team, despite having an extra day to prepare and coordinate everything, would request the presence of the essential witnesses only upon arriving at their office. There were also multiple opportunities to call for such representatives after the arrest of Lumangka at the scene of the crime; the same could have been done right after Lumangka was successfully arrested or while they were in transit to the PDEA office. In any case, no reason was provided at all as to why there were no further efforts from the buy-bust team to secure a DOJ representative, even after none arrived at their office. Clearly, this is not the genuine and sufficient effort contemplated by prevailing jurisprudence.

It must be stressed that 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.⁸⁵

Aside from the glaring absence of an essential witness without any acceptable explanation, the prosecution has not provided any justifiable ground on why the inventory and marking was not done at the scene of the crime, or at least in a nearer venue than the PDEA headquarters in Quezon City. While there was a uniform reason, which is that the crowd was growing and it is impractical to have the inventory and processing of evidence at the venue, alleged in both the affidavit of poseur buyer IO1 Tactac,⁸⁶ and the affidavit of arrest of IO1 Lorilla,⁸⁷ such reason is seemingly contradicted by IO1 Tactac's testimony wherein she states that there were no people in the vicinity at the time of the transaction, to wit:

Q: And will you please describe the place of the sale transaction?

A: It's beside the Puregold, ma'am.

Q: What was the lighting condition of the place or what time was that?

A: At around 7:00 A.M., ma'am.

Q: And were there any people in that vicinity, in that are?

A: At the time, none, ma'am.⁸⁸

Even assuming *arguendo* that there was a crowd gathering, no reason was provided why the PDEA agents would drive 1.5-3 hours to their office in

⁸⁵ *Ramos v. People*, supra note 84.

⁸⁶ Records, p. 9

⁸⁷ Id. at 12.

⁸⁸ TSN, June 7, 2012, p. 18.

Quezon City for the inventory and marking, instead of going to a nearer venue, such as a nearby police station, considering that they have already coordinated with the local police.⁸⁹ The travel time, including the waiting time for the three (3) essential witnesses (who were not even complete), before the marking and inventory of the seized item/s, is a substantial gap in the chain of custody that casts reasonable doubt on the integrity of the evidence presented in court.

To emphasize, considering that this was a pre-planned operation where everything was already set in advance, this Court sees no reason why the PDEA, an agency specialized in the enforcement of dangerous drug cases, could not comply with the basic requirements of the law or give meritorious reasons for non-compliance. Law enforcers cannot feign ignorance of the exacting standards under Section 21, Article II of RA 9165; they are presumed and are required to know the laws they are charged with executing.⁹⁰

Thus, it is clear that the prosecution has not given a justifiable ground for applying the exceptions in the chain of custody rule. All it has done is to assert a self-serving claim that the integrity of the seized pack has been preserved despite the procedural lapses it has committed.⁹¹ The fatal errors of the apprehending team can only lead this Court to seriously doubt the integrity of the *corpus delicti*.

We have held that the prosecution's failure to comply with the chain of custody rule is equivalent to its failure to establish the *corpus delicti*, and therefore, its failure to prove that the crime was indeed committed.⁹² In *People v. Dela Cruz*,⁹³ it was explained that non-compliance with the chain of custody rule is tantamount to failure in establishing identity of *corpus delicti*, to wit:

Non-compliance [with the chain of custody rule] is tantamount to failure in establishing identity of *corpus delicti*, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused.⁹⁴

In conclusion, while this Court finds Lumangka's defense to be untenable, she is entitled to her constitutional right to be presumed innocent until the contrary is proven beyond reasonable doubt. The prosecution cannot just rely on the weakness of the accused-appellant's defense as it has the burden of overcoming such presumption of innocence, which it failed to do so by not being able to show that the chain of custody was properly preserved.

⁸⁹ TSN, May 2, 2012, p. 15.

⁹⁰ *People v. Saragena*, 817 Phil. 117 (2017).

⁹¹ CA rollo, p. 105.

⁹² *People v. Saragena*, supra note 92.

⁹³ 744 Phil. 816 (2014).

⁹⁴ Id. at 827.

Therefore, this Court cannot, in good conscience, order the deprivation of Lumangka's liberty when there is a looming shadow of doubt on her guilt.

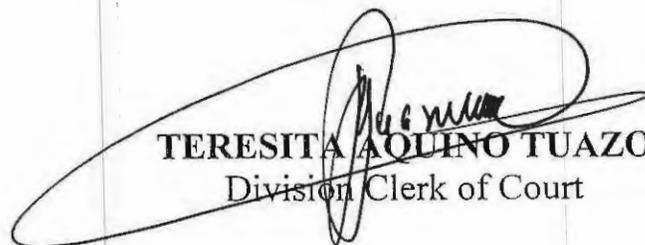
WHEREFORE, the appeal is hereby **GRANTED**. The assailed June 10, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05873 is **REVERSED** and **SET ASIDE**. Accused-appellant Rowena Lumangka y Abubakar is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for any other lawful cause.

Let a copy of this Resolution be furnished the Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. Furthermore, the Superintendent of the Correctional Institution for Women, Mandaluyong City is **DIRECTED** to report to this Court the action it has taken within five (5) days from receipt of this Resolution.

Let an entry of judgment be issued immediately.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court

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 c/o The Superintendent
 Correctional Institution for Women
 1550 Mandaluyong City

THE SUPERINTENDENT (x)
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THE DIRECTOR (x)
 Bureau of Corrections
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 259
 Parañaque City
 (Crim. Case No. 11-0621)

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Please notify the Court of any change in your address.
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