



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 3, 2021**, which reads as follows:*

“**G.R. No. 226153 (People of the Philippines v. Jose Manalang y Mendoza)**. - On appeal is the September 16, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06758 which affirmed the March 18, 2014 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Angeles City, Branch 57 finding accused-appellant Jose Manalang y Mendoza (Manalang) guilty beyond reasonable doubt of violating Sections 5 (illegal sale) and 11 (illegal possession), Article II of Republic Act No. 9165 (RA 9165), or the Comprehensive Dangerous Drugs Act of 2002.

**Version of the Prosecution:**

In the afternoon of July 22, 2006, a civilian asset, accompanied by Senior Police Officer 2 Jose Capinpin III (SPO2 Capinpin), informed Police Officer 3 Oliver Desilos (PO3 Desilos), along with other police officers at the office of the Angeles City Anti-Illegal Drug Special Task Group, that a certain “Joey” has been supplying marijuana in their area. PO3 Desilos relayed the information to Police Senior Inspector Ronaldo Lorenzo, who in turn conducted a short briefing on the entrapment operation against the suspected drug dealer.<sup>3</sup>

PO3 Desilos was designated as the *poseur*-buyer and provided with ₱100.00 and ₱50.00 bills all of which he marked with his initials, “OAD.” The members of the entrapment team left the station and parked their vehicle near the target area. Upon arrival, PO3 Desilos and the asset proceeded directly to the house of “Joey,” who turned out to be Manalang. The other buy-bust team members positioned themselves around 15 to 20 meters away. The asset called out Manalang who met them in front of the house.<sup>4</sup>

After a short introduction, the asset informed Manalang that PO3

<sup>1</sup> *Rollo*, pp. 2-17; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Victoria Isabel A. Paredes.

<sup>2</sup> *CA rollo*, pp. 46-56; penned by Judge Omar T. Viola.

<sup>3</sup> *Rollo*, p. 6.

<sup>4</sup> *Id.*

Desilos wanted to buy his product. After receipt of the ₱150.00 marked money from PO3 Desilos, Manalang retrieved two (2) tea bags of marijuana from his pants' front pocket and handed it over to PO3 Desilos who immediately executed the pre-arranged signal by waving his hand, prompting his colleagues to rush to the scene. When Manalang saw the police, he ran back inside the house.<sup>5</sup>

The police officers pursued Manalang. When SPO2 Capinpin eventually arrested accused-appellant inside the house, he conducted a body search and found the marked money in Manalang's possession. The entrapment team also saw in plain view an open can of oatmeal filled with seven (7) bricks of marijuana in different shapes and sizes on top of a table in the living room.<sup>6</sup>

After Manalang's arrest, PO3 Desilos took possession of the tea bags of marijuana which he had purchased and the marijuana bricks which the team had confiscated. He then marked the tea bags with his initials "OAD" while SPO2 Capinpin wrote his initials "JMC" on the marijuana bricks. SPO2 Capinpin also supposedly conducted the inventory in the presence of a *barangay* official, Nestor Rivera (Rivera), and a media representative, Peejay Kaakbay (Kaakbay). The police officers, along with Manalang, then went to the police station.<sup>7</sup>

At the police station, PO2 Felomino Atiga (PO2 Atiga) performed the initial field test. Meanwhile, PO3 Desilos prepared the following: Affidavit of Apprehension,<sup>8</sup> Transmittal Request for Laboratory Examination (of the seized items),<sup>9</sup> Custodial Investigation Report,<sup>10</sup> Request for Drug Test,<sup>11</sup> photocopy of the marked money,<sup>12</sup> and the Certification of [Initial] Field Test.<sup>13</sup> Also, the Inventory of Seized/Confiscated Evidence,<sup>14</sup> signed by SPO2 Capinpin and the witnesses, Rivera and Kaakbay, was prepared. PO2 Atiga brought the request for laboratory examination along with the specimens to the crime laboratory and gave it to a certain Officer Abella.<sup>15</sup>

### Version of the Defense:

The defense averred that on the day of the incident, Manalang was watching television inside his house. Thereafter, someone entered looking for a certain Jesus Mendoza. Another individual arrived and pointed to Manalang as the one being sought.<sup>16</sup>

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<sup>5</sup> Id.

<sup>6</sup> Id. at 6-7.

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

<sup>8</sup> *Records*, p. 4.

<sup>9</sup> Id. at 6-7.

<sup>10</sup> Id. at 5.

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

<sup>12</sup> Id. at 10.

<sup>13</sup> Id. at 8.

<sup>14</sup> Id. at 9.

<sup>15</sup> *Rollo*, p. 7.

<sup>16</sup> Id.

Manalang alleged that he was transported to the Drug Enforcement Unit and detained for reasons unknown to him. He then saw his uncle, Rivera, the *barangay* official who signed the inventory. Surprised to see Manalang in the detention cell, Rivera informed the police officers that he (Manalang) is his nephew and that they arrested the wrong person as he was not the "Jesus Mendoza" being pursued. Manalang asserted that the police officers assured Rivera that he (Manalang) would just be subjected to standard procedure. Unfortunately, Rivera died of a heart attack three (3) weeks after the incident.<sup>17</sup> Also, Manalang averred that he only learned of the charges against him during his arraignment. He maintained that there was no buy-bust operation.<sup>18</sup>

Chemistry Report No. D-145-2006<sup>19</sup> dated July 23, 2006 and prepared by PO/Forensic Chemical Officer Bernalen Rago Agpalasin (PO Agpalasin) indicated that the specimens tested positive for marijuana, a dangerous drug.

On July 24, 2006, two Informations were filed charging Manalang with violating Section 5, (Criminal Case No. DC 06-787) and Section 11, (Criminal Case No. DC 06-788), Article II of RA 9165, to wit: (the accusatory portion of which reads:

Criminal Case No. DC 06-787 (Illegal Sale):

That on or about the 24<sup>th</sup> day of July 2006 in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and/or deliver to a poseur buyer the following, to wit:

(a) One (1) tea bag of marijuana leaves weighing more or less THREE GRAMS and SEVEN TENTHS (3.7) OF A GRAM OF MARIJUANA (Tetra Hydro Cannabinol); and

(b) One (1) tea bag of marijuana leaves weighing more or less FOUR GRAMS and THREE TENTHS (4.3) OF A GRAM OF MARIJUANA (Tetra Hydro Cannabinol) or a total of EIGHT (8) GRAMS OF MARIJUANA (Tetra Hydro Cannabinol) which is a dangerous drug, without any authority whatsoever.

CONTRARY TO LAW.<sup>20</sup>

Criminal Case No. DC 06-788 (Illegal Possession), to wit:

That on or about the 24<sup>th</sup> day of July 2006 in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control the following[,] to wit:

<sup>17</sup> Id. at 7-8.

<sup>18</sup> Id. at 8.

<sup>19</sup> Exhibit "F" of the prosecution.

<sup>20</sup> Records, p. 1.

(a) One (1) brick of Marijuana leaves fruiting tops (TETRAHYDRO CANNABINOL) weighing more or less SEVENTY[-]EIGHT GRAMS and SEVENT TENTHS (78.7) OF A GRAM;

(b) One (1) brick of Marijuana leaves fruiting tops (TETRAHYDRO CANNABINOL) weighing more or less SEVENTY[-]SIX GRAMS and NINE TENTHS (76.9) OF A GRAM;

(c) One (1) brick of Marijuana leaves fruiting tops (TETRAHYDRO CANNABINOL) weighing more or less EIGHTY[-]ONE GRAMS and SIX TENTHS (81.6) OF A GRAM;

(d) One (1) brick of Marijuana leaves fruiting tops (TETRAHYDRO CANNABINOL) weighing more or less SEVENTY[-]EIGHT GRAMS and SIX TENTHS (78.6) OF A GRAM;

(e) Three (3) bricks of Marijuana leaves fruiting tops (TETRAHYDRO CANNABINOL) weighing more or less THIRTY[-]NINE GRAMS and SIX TENTHS (39.6) OF A GRAM; OR a total of THREE HUNDRED FIFTY FIVE GRAMS and FOUR TENTHS OF A GRAM of marijuana fruiting tops (TETRAHYDRO CANNABINOL), which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.<sup>21</sup>

During his arraignment, Manalang entered a “not guilty” plea.<sup>22</sup>

At the pre-trial, the parties stipulated on the following: (1) that the incident transpired on July 22, 2006 at around 2 p.m. at 181 San Ramon St., Brgy. Sto. Domingo, Angeles City; (2) that Manalang was the same person arraigned; (3) that 181 San Ramon St., Brgy. Sto. Domingo, Angeles City is Manalang’s residence; (4) that at the time of the incident, the police officers were not armed with a search warrant or warrant of arrest; (5) that witness PO Agpalasin is a forensic chemical officer assigned at the Regional Crime Laboratory III, Camp Olivas, San Fernando City; (6) that in the course of PO Agpalasin’s employment, she received a request for laboratory examination dated July 22, 2006 for Specimens “A,” “A-2” and “B-1” to “B-5”; and (7) that PO Agpalasin has no knowledge about where, when and from whom the specimens were retrieved.<sup>23</sup>

PO3 Desilos narrated the prosecution’s version of the incident.<sup>24</sup> He stated that he was in possession of the two (2) tea bags subject of the sale while SPO2 Capinpin took possession of the seven (7) bricks of marijuana after their confiscation.<sup>25</sup> He affirmed that he and SPO2 Capinpin wrote their initials on the seized items at the crime scene<sup>26</sup> and that Rivera and Kaakbay

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<sup>21</sup> Id. at 21.

<sup>22</sup> Id. at 33, 35.

<sup>23</sup> Id. at 61-62.

<sup>24</sup> TSN, July 24, 2007, pp. 7-11; August 14, 2007, pp. 4-12.

<sup>25</sup> TSN, August 14, 2007, p. 12.

<sup>26</sup> TSN, July 21, 2009, pp. 5-6.

witnessed the conduct of the inventory.<sup>27</sup>

During his cross-examination, PO3 Desilos revealed that around three (3) weeks to a month before the entrapment, they received information that Manalang was engaged in illegal drug trade. Nonetheless, they did not conduct an operation immediately because they did not have “access” to the accused yet.<sup>28</sup> He expounded that they conducted surveillance on Manalang prior to the incident but they observed that the gate of his house was always closed.<sup>29</sup> PO3 Desilos confirmed that a media representative was present<sup>30</sup> during the buy bust but none from the Department of Justice (DOJ).<sup>31</sup> He could not recall where the photographs of the items were kept, even when he averred that one of the police officers took the pictures.<sup>32</sup> Curiously, he stated that he marked the seized items at the police station and not at the crime scene.<sup>33</sup>

SPO2 Capinpin also confirmed the narration of facts of the prosecution.<sup>34</sup> He alleged that after he arrested Manalang, he retrieved the marked money from him.<sup>35</sup> During the inventory at the crime scene,<sup>36</sup> the police officers, Manalang, and representatives from the *barangay* and media were present.<sup>37</sup>

During his cross-examination, SPO2 Capinpin admitted that they did not conduct prior coordination with the City Drug Enforcement Unit (CDEU).<sup>38</sup> The representatives from the *barangay* and media were called in after the entrapment operation to witness the inventory.<sup>39</sup> However, he could not recall if photographs of the confiscated items were taken or if any were presented to the Office of the City Prosecutor.<sup>40</sup>

### **Ruling of the Regional Trial Court:**

In a March 18, 2014 Decision,<sup>41</sup> the trial court found Manalang guilty as charged. It ruled that SPO2 Capinpin corroborated PO3 Desilos’ testimony on material points and that the elements of sale and possession of illegal drugs are present. From the time of the sale and confiscation, the seized drugs were in the possession of PO3 Desilos and SPO2 Capinpin until their turn over to

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<sup>27</sup> Id. at 12.

<sup>28</sup> TSN, November 3, 2009, pp. 11-12.

<sup>29</sup> TSN, November 3, 2009, pp. 13-14; April 6, 2010, p. 9.

<sup>30</sup> TSN, April 6, 2010, pp. 6-7.

<sup>31</sup> Id. at 8.

<sup>32</sup> Id. at 7-8.

<sup>33</sup> Id. at 8.

<sup>34</sup> TSN, November 29, 2011, pp. 4-9.

<sup>35</sup> Id. at 7.

<sup>36</sup> TSN, November 29, 2011, p. 9; May 15, 2012, p. 7.

<sup>37</sup> TSN, November 29, 2011, p. 8.

<sup>38</sup> TSN, May 15, 2012, p. 4.

<sup>39</sup> Id. at 8-9.

<sup>40</sup> Id. at 9.

<sup>41</sup> *Supra* note 2.

PO2 Atiga at the police station, who then conducted the initial field test and brought the specimens to the laboratory for examination.<sup>42</sup>

The trial court did not find merit in Manalang's denial. It noted that although he claimed that the police officers planted the evidence against him, yet he did not file any charges against them. The trial court pointed out that it even gave Manalang time to present additional witnesses but he did not do so.<sup>43</sup> The dispositive portion of the trial court's Decision reads:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court finds accused **JOSE MANALANG Y MENDOZA GUILTY** of the offense as charged and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** for Violation of Section 5 of R.A. 9165, and a fine of Php 500,000.00.

For violation of Sec. 11 of RA 9165 the Court also [declares] Manalang, **GUILTY** and hereby sentences him to suffer the penalty of imprisonment of **TWELVE (12) YEARS AND ONE (1) DAY as minimum to FOURTEEN (14) YEARS AND EIGHT (8) MONTHS** as maximum of Reclusion Temporal for Violation of Section 11 of R.A. 9165 and a fine of Php 300,000.00.

**SO ORDERED.**<sup>44</sup>

Aggrieved, Manalang appealed<sup>45</sup> to the CA. He argued that there are material inconsistencies in the testimonies of PO3 Desilos and SPO2 Capinpin.<sup>46</sup> While PO3 Desilos stated that the inventory was prepared in the police station, SPO2 Capinpin testified that it was prepared at Manalang's residence.<sup>47</sup> Section 21(1), Article II of RA 9165 was grossly disregarded as no justifiable ground exists to excuse noncompliance thereto.<sup>48</sup> The signatures of Rivera and Kaakbay are suspect as they were not presented in court to confirm their presence during the inventory. Likewise, there was no representative from the DOJ and proof that photographs of the confiscated items were taken during the inventory.<sup>49</sup>

Manalang claimed that since the chain of custody was broken, integrity and evidentiary value of the seized items were not properly preserved.<sup>50</sup> There was also inconsistency with regard to the place where the inventory was conducted. Moreover, PO2 Atiga, who purportedly delivered the specimens to the crime laboratory; and PO1 Abella, who supposedly received the specimens from PO2 Atiga, did not testify in court. The prosecution's failure to present them created a gap in the chain of custody.<sup>51</sup> Additionally, the turnover and

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<sup>42</sup> CA rollo, pp. 54-55.

<sup>43</sup> Id. at 55.

<sup>44</sup> Id. at 55-56.

<sup>45</sup> Records, pp. 249-252.

<sup>46</sup> CA rollo, pp. 28-30.

<sup>47</sup> Id. at 30.

<sup>48</sup> Id. at 31.

<sup>49</sup> Id. at 32-33.

<sup>50</sup> Id. at 36-37.

<sup>51</sup> Id. at 38.

submission of the marked seized items from the forensic chemist to the trial court were not accounted for or testified on.<sup>52</sup> He pointed out that “the allegedly seized items listed in the inventory of seized/confiscated evidence (Exhibit “E”) are not exactly similar with the items stated in the laboratory examination request (Exhibit “C”).”<sup>53</sup>

Conversely, the People, through the Office of the Solicitor General (OSG), contended that since the prosecution established the elements of the crimes, Manalang’s guilt was proven beyond reasonable doubt.<sup>54</sup> The alleged inconsistencies in the testimonies of the prosecution’s witnesses were minor which do not affect their credibility.<sup>55</sup> The integrity and evidentiary value of the seized drugs were preserved and the chain of custody was unbroken since Section 21 of RA 9165 was complied with.<sup>56</sup> Moreover, the sequence of events showed how the seized drugs were marked, taken into custody, brought for laboratory examination, and finally presented in court.<sup>57</sup>

Also, the People asserted that the prosecution has the discretion whether or not to present the *barangay* official and the media representative. Furthermore, the lack of photographs of the seized items was not fatal to the prosecution’s case since the police officers handled the operation to ensure the integrity and evidentiary value of the confiscated drugs.<sup>58</sup>

#### **Ruling of the Court of Appeals:**

The appellate court, in its assailed September 16, 2015 Decision,<sup>59</sup> affirmed *in toto* the court *a quo*’s ruling.<sup>60</sup> It held that Manalang’s guilt was established beyond reasonable doubt as he was caught in a valid buy-bust operation.<sup>61</sup> The elements of the illegal sale and possession of drugs are present in the case<sup>62</sup> and Manalang’s mere denial cannot prevail over the prosecution’s evidence. Rivera, Manalang’s uncle, would not have taken part in the inventory of the seized items if he (Manalang) was truly innocent. In any case, the appellate court did not find material inconsistencies in the testimonies of the prosecution witnesses.<sup>63</sup>

Moreover, it noted that Manalang did not lodge a complaint against the police officers and did not bother to ascribe any ill motive against them.<sup>64</sup> Likewise, it did not find merit in Manalang’s contention that the arresting officers failed to preserve the integrity and evidentiary value of the seized

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<sup>52</sup> Id. at 39.

<sup>53</sup> Id.

<sup>54</sup> Id. at 75, 79-80.

<sup>55</sup> Id. at 75-76.

<sup>56</sup> Id. at 80-81.

<sup>57</sup> Id. at 81, 85-86.

<sup>58</sup> Id. at 87-88.

<sup>59</sup> *Supra* note 1.

<sup>60</sup> *Rollo*, pp. 9-10, 16.

<sup>61</sup> Id. at 9-10.

<sup>62</sup> Id. at 10-11.

<sup>63</sup> Id. at 12.

<sup>64</sup> Id. at 11-12.

drugs in accordance with Section 21, Article II of RA 9165.<sup>65</sup> Thus, it ruled that the chain of custody was unbroken based on the evidence.<sup>66</sup> Although the photographs were misplaced and the inventory was not witnessed by a DOJ representative, the prosecution proved with moral certainty that the illegal drugs presented in court were the same items recovered from the accused-appellant.<sup>67</sup> Finally, it held that the factual findings of the trial court deserve great weight and that its assessment of the credibility of the witnesses should be considered as it had the opportunity to observe them firsthand.<sup>68</sup>

Discontented, Manalang appealed<sup>69</sup> before the Court.

The main issue is whether or not Manalang is guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs.

### Our Ruling

The petition is meritorious.

Section 5, Article II of RA 9165 provides that the following elements must be satisfied to successfully prosecute the sale of illegal drugs: “(1) the identity of the buyer and the seller, the object and the consideration, and (2) the delivery of the thing sold and the payment.”<sup>70</sup> Thus, “the delivery of the illicit drug to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.”<sup>71</sup>

Similarly, Section 11, Article II of the same law requires the following elements to be present for the prosecution of illegal possession of dangerous drugs: “(1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the said drug x x x.”<sup>72</sup>

“[P]ossession under the law includes not only actual possession but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.”<sup>73</sup>

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<sup>65</sup> Id. at 12-13.

<sup>66</sup> Id. at 13-14.

<sup>67</sup> Id. at 14-15.

<sup>68</sup> Id. at 15-16.

<sup>69</sup> Id. at 18-19.

<sup>70</sup> *People v. Sioson y Limon*, G.R. No. 242686, July 7, 2020 citing *People v. Jugo*, G.R. No. 231792, January 29, 2018.

<sup>71</sup> *People v. Goyenoche y Gepiga*, G.R. No. 243985, September 3, 2020 citing *People v. Vicente Sipin y De Castro*, G.R. No. 224290, June 11, 2018.

<sup>72</sup> *People v. Sioson y Limon*, supra citing *People v. Baradi*, G.R. No. 238522, October 1, 2018.

<sup>73</sup> *People v. Magayon y Francisco*, G.R. No. 238873, September 16, 2020.

“As a general rule, ‘the testimonies of the police officers who apprehended the accused are accorded full faith and credit because of the presumption that they have performed their duties regularly.’<sup>74</sup> However, **their failure to observe the proper procedure *without justifiable cause effectively obliterates that presumption.***”<sup>75</sup>

In the instant case, the buy-bust team unjustifiably failed to observe the proper protocol in relation to the seizure and custody of dangerous drugs or the *chain of custody* rule under Section 21 (1), Article II of RA 9165, 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. (Underscoring supplied)

x x x x

In addition, Section 21 (a), Article II of the Implementing Rules and Regulations ‘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;*<sup>76</sup>

<sup>74</sup> *People v. Dungo y Ocampo*, G.R. No. 229720, August 19, 2019 citing *People v. De Guzman*, 630 Phil. 637, 655 (2010).

<sup>75</sup> *Id.*

<sup>76</sup> *People v. Manansala y Pabalan*, G.R. No. 228825, July 28, 2020.

x x x x (Emphasis supplied).

Section 21 of RA 9165 was amended by RA 10640<sup>77</sup> on July 15, 2014.<sup>78</sup> The chain of custody rule mandates that, immediately after seizure and confiscation, the marking, photographing and inventory of the seized items should be conducted “in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media AND the Department of Justice (DOJ), AND any elected public official;<sup>79</sup> or (b) if *after* the amendment of RA 9165 by RA 10640<sup>80</sup> an elected public official AND a representative of the National Prosecution Service<sup>81</sup> OR the media.”<sup>82</sup>

The presence of these insulating witnesses is required to establish and preserve the integrity of the chain of custody and to remove any suspicion of switching, planting, or contamination of evidence.<sup>83</sup>

Since the transaction in this case transpired on July 22, 2006, the requirements of RA 9165 prior to its amendment shall apply. Notably, the police only managed to secure the presence and signatures of the representatives from the *barangay* and the media to serve as additional witnesses during the inventory. The prosecution did not explain or justify the entrapment team’s failure to secure the presence of a DOJ representative.

*People v. Lim*<sup>84</sup> underscored the significance of the presence of the three witnesses, specifically the representatives from the DOJ and the media, as well as any elected public official, at the time of the physical inventory and 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**

<sup>77</sup> An Act To Further 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.”

<sup>78</sup> Became effective on August 7, 2014; *Sayson y Parocha v. People*, G.R. No. 249289 (*Resolution*), September 28, 2020.

<sup>79</sup> *Plan, Jr. y Beloncio v. People*, G.R. No. 247589 (*Resolution*), August 24, 2020 citing Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>80</sup> *Id.*, citing *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

<sup>81</sup> *Id.*, stating that this office falls under the DOJ based on Presidential Decree No. 1275, Section 1 and RA 10071, Section 3.

<sup>82</sup> *Id.*, citing Section 21 (1), Article II of RA 9165, as amended by RA 10640.

<sup>83</sup> *People v. Dejos y Pinili*, G.R. No. 237423 (*Resolution*), October 12, 2020 citing *People v. De Dios*, G.R. No. 243664, January 22, 2020.

<sup>84</sup> G.R. No. 231989, September 4, 2018.

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, 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.<sup>85</sup>

Moreover, jurisprudence dictates that the prosecution should prove that earnest efforts were employed to secure the attendance of the key witnesses in accordance with Section 21, Article II of RA 9165. *Ramos v. People*<sup>86</sup> instructs:

x x x [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.**

To reiterate, “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.”<sup>87</sup>

The police officers admitted that they performed prior surveillance on Manalang before the entrapment operation. Although they claimed that they

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<sup>85</sup> Id., citations omitted.

<sup>86</sup> G.R. No. 233572, July 30, 2018.

<sup>87</sup> *People v. Vistro*, G.R. No. 225744, March 6, 2019.

could not confirm whether or not Manalang indeed sold illegal drugs at the time since the gate of his house was always closed, they did not explain why they suddenly pushed through with the buy-bust operation or why they were suddenly convinced that Manalang indeed sold drugs save for the supposed “tip” from their asset.

Furthermore, the police failed to coordinate with the CDEU or justify the absence of a representative from the DOJ. Since the entrapment operation was conducted in the afternoon, they certainly had enough time to request the DOJ (or its local counterpart) to send its representative during the inventory. If nobody was available, the police officers could have explained the lapse on paper or during the trial of the case. Yet, they did not even attempt to offer a reason for this glaring omission. Simply put, the police officers involved in the operation did not exert earnest efforts to secure the presence of all of the necessary witnesses..

This undeniable lapse casts doubt upon the integrity and evidentiary value of the seized items. Otherwise stated, the integrity of the confiscated items might have been compromised while under the custody of the police.

Other irregularities or inconsistencies are also extant in this case. Firstly, the notations in the inventory and the request for laboratory examination do not add up. The confiscation of the two (2) tea bags containing marijuana was not indicated in the inventory, even when there was a request to have them tested for the presence of illegal substances. Secondly, PO3 Desilos, during his testimony, initially stated that the inventory was conducted in Manalang’s house yet he later said that it was done at the police station. Such was incompatible with SPO2 Capinpin’s statement that the inventory was performed at the crime scene. Thirdly, there is no sufficient proof showing that photographs were taken during the seizure and inventory of the prohibited drugs. Fourthly, the prosecution did not satisfactorily demonstrate how the seized items were turned over to the court from the custody of the police. Lastly, the following did not testify: 1) Rivera, the *barangay* representative (but which was explained due to his death) 2) Kaakbay, the media representative; 3) PO2 Atiga (the one who conducted the initial field test and brought the specimens to the crime laboratory); and 4) PO1 Abella, the one who supposedly received the specimens in the crime laboratory and turned it over to PO Agpalasin for examination. The testimonies of these individuals could have bolstered the prosecution’s case regarding the proper turnover of the seized items while they were in police custody so as to preserve their evidentiary value. However, for reasons only known to the prosecution, they were not presented as witnesses.

To sustain a conviction in criminal cases, proof beyond reasonable doubt<sup>88</sup> is required. In the case at bench, the prosecution did not satisfy this quantum of proof since the integrity and evidentiary value of the confiscated

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<sup>88</sup> RULES OF COURT, Rule 133 § 2.

items were not preserved due to the entrapment team's lapses. Consequently, the Court is constrained to reverse accused-appellant Manalang's conviction based on reasonable doubt.

**WHEREFORE**, the appeal is **GRANTED**. The September 16, 2015 Decision rendered by the Court of Appeals in CA-G.R. CR-HC No. 06758 is **REVERSED and SET ASIDE**. Accused-appellant Jose Manalang y Mendoza is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director General, Bureau of Corrections, Muntinlupa City, for immediate implementation. Furthermore, the Director General of the Bureau of Corrections is **DIRECTED** to report to this Court the action he has taken within five (5) days from receipt of this Resolution.

**SO ORDERED.**" (Leonen and Lopez, *JJ*, on leave.)

By authority of the Court:

*Misa D C Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *5/7/21*

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