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as maximum, and ordered to pay the heirs of BBB the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, with legal interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 225965. March 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PUYAT MACAPUNDAG *y* LABAO**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS, DISTINGUISHED.— Macapundag was charged with illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165. In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment. On the other hand, the prosecution must establish the following elements to convict an accused charged with illegal possession of dangerous drugs: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and

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consciously possessed the said drug. Notably, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE PROCEDURE POLICE OFFICERS MUST FOLLOW IN HANDLING THE SEIZED DRUGS IN SECTION 21 OF REPUBLIC ACT NO. 9165 IS A MATTER OF SUBSTANTIVE LAW, AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY, OR WORSE, IGNORED AS AN IMPEDIMENT TO THE CONVICTION OF ILLEGAL DRUG SUSPECTS; VIOLATION IN CASE AT BAR.— Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.** x x x In the present case, the prosecution did not even bother to explain why the inventory and photograph of the seized evidence were not made either in the place of seizure and arrest or at the police station, as required by the IRR in case of warrantless arrests, or why the marking of the seized item was not made at the place of seizure in the presence of Macapundag. It was also silent on the absence of a representative from the DOJ, the media and an elected public official to witness the inventory and receive copies of the same. Similarly unexplained was the lack of inventory and photographs of the seized items. Accordingly, the plurality of the breaches of procedure committed by the police officers, unacknowledged and unexplained by

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the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. It has been repeated in jurisprudence that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Puyat Macapundag *y* Labao (Macapundag) assailing the Decision[2] dated April 22, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06224, which affirmed the Joint Decision[3] dated June 13, 2013 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Crim. Case Nos. 81014 and 81015, finding Macapundag guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from two (2) Informations filed before the RTC accusing Macapundag of violating Sections 5 and 11, Article II of RA 9165, *viz*.:

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[1] See Notice of Appeal dated May 14, 2015; *rollo*, pp. 14-15.

[2] *Id*. at 2-13. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.

[3] CA *rollo*, pp. 26-46. Penned by Judge Victoriano B. Cabanos.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN

Criminal Case No. 81014

That on or about the 14th day of March, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO[3] GEORGE ARDEDON[5] who posed, as buyer, EPHEDRINE weighing 0.01 gram, a dangerous drug, without the corresponding license or prescription therefore, knowing the same to be such.

Contrary to Law. [6]

Criminal Case No. 81015

That on or about the 14th day of March, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control three (3) heat-sealed transparent plastic sachets each containing EPHEDRINE weighing 0.02 gram, 0.01 gram & 0.02 gram, when subjected for laboratory examination gave positive result to the tests of Ephedrine [sic], a dangerous drug.

Contrary to Law. [7]

The prosecution alleged that at around 8:00 to 8:30 in the morning of March 14, 2009, an informant tipped the Caloocan City Police that a certain individual known as alias "Popoy" was selling *shabu* in Baltazar Street, 10th Avenue, Caloocan City. Acting on the tip, Police Chief Inspector (PCI) Christopher Prangan (PCI Prangan) ordered the conduct of a buy-bust operation in coordination with the Philippine Drug Enforcement Agency (PDEA), with Police Officer 3 (PO3) George Ardedon (PO3 Ardedon) designated as poseur-buyer, and Senior Police Officer 1 (SPO1) Arnel Victoriano (SPO1 Victoriano) and Police Officer 2 (PO2) Jeffred Pacis (PO2 Pacis), as back-up

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AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] "PO2" in some parts of the records. See *rollo*, p. 5.

[6] See Information for Criminal Case No. 81014; records, p. 2.

[7] See Information for Criminal Case No. 81015; records, p. 16.

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officers.[8] After the team's final briefing, they proceeded to the target area where they saw Macapundag, who was then identified by the informant as "Popoy." Consequently, PO3 Ardedon approached Macapundag and retorted "*Brod, pakuha*," followed by "*Brod, paiskor naman*." Macapundag replied "*Magkano?*," to which PO3 Ardedon responded "*Tatlong piso lang*," and simultaneously handed the three (3) marked ₱100.00 bills. Macapundag then took four (4) plastic sachets containing white crystalline substance, gave one to PO3 Ardedon, and returned the other three (3) back to his pocket. Upon receiving the sachet, PO3 Ardedon gave the pre-arranged signal by holding his nape and then held Macapundag, as the back-up officers rushed to the scene. PO3 Ardedon marked the plastic sachet he purchased from Macapundag, while SPO1 Victoriano marked the other three (3) recovered from his pocket.[9] Thereafter, they brought Macapundag to the police station, where the seized items were turned over to PO2 Randulfo Hipolito (PO2 Hipolito), the investigator on duty.[10] Later, PO2 Hipolito brought the items to the crime laboratory for physical examination.[11] Eventually, Forensic Chemical Officer-PCI Stella Ebuen (PCI Ebuen) examined the specimen, which tested positive for ephedrine, a dangerous drug.[12]

In his defense, Macapundag denied the charges against him. He testified that he was arrested on March 12, 2009, and not on March 14, 2009 as alleged by the prosecution. At around noon of the said date, he claimed that he was just sitting in his house when three (3) armed men suddenly entered and looked

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[8] *Rollo*, pp. 5-6.

[9] *Id.* at 6.

[10] See Evidence Acknowledgement Receipt dated March 14, 2009; records, p. 24. Turned over by SPO1 Victoriano and PO2 Ardedon and received by PO2 Hipolito.

[11] See Request for Laboratory Examination dated March 14, 2009; *id.* at 5. See also Request for Drug Test dated March 14, 2009; *id.* at 7.

[12] See Physical Science Report No. D-85-09 dated March 14, 2009; *id.* at 6. See also Physical Science Report No. DT-78-09 dated March 14, 2009; *id.* at 8.

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for a certain "Rei." He told them that "Rei" lived in the other house, but one of the men held and handcuffed him. He was then brought to the Sangandaan Police Station where he was detained in a small cell. Later, he was asked to call some relatives. When he replied that he only has his daughter, SPO1 Victoriano hit him on the chest. After a few days, the police demanded ₱50,000.00 from Macapundag's daughter for his release. When he told them that he did not have that amount, he was hit again. On March 15, 2009, he was brought to the house of the fiscal for inquest.[13]

The RTC Ruling

In a Joint Decision[14] dated June 13, 2013, the RTC found Macapundag guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165, for illegal sale and illegal possession of dangerous drugs, respectively, finding that all the necessary elements thereof have been proven. In particular, the prosecution was able to establish that PO3 Ardedon indeed purchased a sachet of ephedrine from Macapundag in the amount of ₱300.00. Likewise, it was shown that three (3) other sachets of ephedrine were recovered from Macapundag upon his arrest.[15] The RTC further observed that the prosecution was able to demonstrate an unbroken chain of custody over the seized items.[16] Meanwhile, the RTC gave no credence to the latter's defenses of denial and alibi in light of his positive identification as the culprit, as well as the presumption of regularity accorded to police officers in the performance of their duties.[17]

Aggrieved, Macapundag elevated his conviction before the CA.[18]

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[13] *Rollo*, pp. 6-7.

[14] CA *rollo*, pp. 26-46.

[15] *Id*. at 42-43.

[16] *Id*. at 43-44.

[17] *Id*. at 44-45.

[18] See Notice of Appeal dated June 24, 2013; records, p. 241.

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The CA Ruling

In a Decision[19] dated April 22, 2015, the CA affirmed the RTC Decision *in toto*, finding that the prosecution had established beyond reasonable doubt that Macapundag illegally sold and possessed dangerous drugs in violation of Sections 5 and 11, Article II of RA 9165. In the same vein, the CA found that the integrity of the seized drugs was aptly preserved and the chain of custody was not broken, notwithstanding the fact that the procedural requirements in Section 21 of RA 9165 were not faithfully observed.[20]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Macapundag's conviction for illegal sale and illegal possession of dangerous drugs, as defined and penalized under Sections 5 and 11, Article II of RA 9165, should be upheld.

The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[21] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[22]

Macapundag was charged with illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165. In order to secure the conviction of an accused charged

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[19] *Rollo*, pp. 2-13.

[20] *Id*. at 8-12.

[21] See *People v. Dahil*, G.R. No. 212196, January 12, 2015, 745 SCRA 221, 233; citation omitted.

[22] See *People v. Comboy*, G.R. No. 218399, March 2, 2016; citation omitted.

with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment.[23] On the other hand, the prosecution must establish the following elements to convict an accused charged with illegal possession of dangerous drugs: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[24]

Notably, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[25]

In the Appellant's Brief,[26] Macapundag prayed for his acquittal in view of the police officers' non-compliance with Section 21 of RA 9165 and its Implementing Rules and Regulations (IRR). Particularly, he claims that they did not make any inventory and failed to take pictures of the confiscated drugs along with him at the scene of his arrest. There was also no justification given as to why they failed to comply with these requirements of law.[27]

The appeal is meritorious.

Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in

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[23] *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 149; citation omitted.

[24] *People v. Bio*, G.R. No. 195850, February 16, 2015, 750 SCRA 572, 578; citation omitted.

[25] *People v. Viterbo*, G.R. No. 203434, July 23, 2014, 730 SCRA 672, 680; citation omitted.

[26] See Brief for the Accused-Appellant dated October 25, 2013; CA *rollo*, pp. 9-24.

[27] *Id*. at 19.

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handling the seized drugs, in order to preserve their integrity and evidentiary value.[28] Under the said section, the apprehending team shall, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.**[29]

In this case, the prosecution was able to establish that PO3 Ardedon (with respect to the sachet handed over by Macapundag to him) and SPO1 Victoriano (with respect to the three sachets recovered from Macapundag upon his arrest) marked the seized items immediately at the place of arrest. However, the prosecution's witnesses failed to state whether or not the police officers inventoried and photographed the seized sachets in the presence of Macapundag or his representative. Likewise, they were silent as to the presence of the other required witnesses, *i.e.*, a representative from the Department of Justice (DOJ), any elected public official, and a member of the press.[30] In fact, the prosecution did not even offer any inventory of the seized items or photographs thereof as evidence.[31] In this relation, it is observed that the Evidence Acknowledgement Receipt[32] and the Affidavit of Attestation,[33] which form part of the evidence of the prosecution, likewise failed to disclose that the seized

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[28] *People v. Sumili*, *supra* note 23, at 150-151.

[29] See Section 21 (1) and (2), Article II of RA 9165.

[30] TSN dated July 30, 2010, pp. 18-27. See also TSN dated March 11, 2011, pp. 14-24. See also TSN dated September 2, 2011, pp. 7-11.

[31] See Joint Formal Offer of Prosecution's Exhibits dated November 17, 2011; Folder of Exhibits, pp. 1-4.

[32] See Evidence Acknowledgement Receipt; records, p. 24.

[33] See Affidavit of Attestation; *id*. at 23.

items were actually inventoried or photographed in accordance with the parameters provided by Section 21 of RA 9165 and its IRR; thus, their submission cannot constitute compliance with the law.

In *People v. Sanchez*,[34] the Court recognized that under varied field conditions, strict compliance with the requirements of Section 21 of 9165 may not always be possible, and ruled that under the implementing guidelines of the said Section, **"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." However, the Court added that the prosecution bears the burden of proving justifiable cause.** [35]

Thus, in *People v. Almorfe*,[36] **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**.[37] Also, in *People v. De Guzman*,[38] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[39]

In the present case, the prosecution did not even bother to explain why the inventory and photograph of the seized evidence were not made either in the place of seizure and arrest or at the police station, as required by the IRR in case of warrantless arrests, or why the marking of the seized item was not made at

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[34] 590 Phil. 214, 232 (2008).

[35] *Id*. at 234.

[36] 631 Phil. 51 (2010).

[37] See *id*. at 60; citation omitted.

[38] 630 Phil. 637 (2010).

[39] *Id*. at 649.

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the place of seizure in the presence of Macapundag. It was also silent on the absence of a representative from the DOJ, the media and an elected public official to witness the inventory and receive copies of the same. Similarly unexplained was the lack of inventory and photographs of the seized items.[40] Accordingly, the plurality of the breaches of procedure committed by the police officers, unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[41] It has been repeated in jurisprudence that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[42]

With the foregoing pronouncement, the Court finds petitioner's acquittal in order. As such, it is unnecessary to delve into the other issues raised in this case.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 22, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06224 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Puyat Macapundag *y* Labao is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

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[40] See *People v. Martinez*, 652 Phil. 347, 376-381 (2010).

[41] *People v. Sumili*, *supra* note 23 at 154.

[42] See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).