

## SECOND DIVISION

[ G.R. No. 230718, September 16, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CRISANTO HAYA Y DELOS SANTOS, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**INTING, J.:**

In a Resolution<sup>[1]</sup> dated August 1, 2018, the Court affirmed the Decision<sup>[2]</sup> dated August 17, 2016 of the Court of Appeals (CA) in CA G.R. CR.-H.C. No. 06277 which upheld the conviction of Crisanto Haya y Delos Santos (accused-appellant) for violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant moved for reconsideration<sup>[3]</sup> of the Resolution arguing that the prosecution failed to sufficiently prove his guilt. He pointed that only a field reporter was present as a witness during the inventory and there were no representative from the Department of Justice (DOJ) and elected public official. There was also no indication that the police officers even attempted to comply with the requirements of the law.<sup>[4]</sup>

As will be discussed, there is a need to reconsider and set aside the Resolution dated August 1, 2018 and enter a new one acquitting accused-appellant.

Accused-appellant was charged with the offenses of Illegal Sale and Possession of Dangerous Drugs committed in 2010 or prior to the amendment of RA 9165. Hence, the applicable law is the original provision of Section 21 and its Implementing Rules and Regulations. Accordingly, in the conduct of buy-bust operations, (1) the seized items must be marked, inventoried, and photographed immediately after seizure or confiscation; and (2) the marking, physical inventory, and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.<sup>[5]</sup>

In a number of cases, the Court held that the presence of witnesses from the DOJ, media, and any elected public officer is *necessary* to protect against the possibility of planting, contamination, or loss of the seized drug. Without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drug, the evils of switching, "planting" or contamination of the evidence that had tainted previous buy-bust operations would not be averted, negating the integrity and credibility of the seizure and confiscation of the subject drug specimen that was evidence of the *corpus delicti*, and thus adversely affecting the trustworthiness of the incrimination of the accused.

<sup>[6]</sup>

In the case at bar, noticeably, the seized items were not marked immediately at the place of arrest. Although the physical inventory and taking of photographs may be conducted at the nearest police station, or office of the apprehending team in case of warrantless seizures, nothing prevents the police officers from immediately conducting these steps at the place where the items were seized. Considering that the seized items were to be used against accused-appellant, it was imperative for the police officers to mark them at once without delay. This is material since the penalty to be imposed for illegal possession of drugs depends upon the quantity or weight thereof.

Additionally, the rest of the inventory process was undertaken without the presence of a representative from the DOJ and an elected public official as mandatorily required under Section 21, Article II of RA 9165. As indicated in the Inventory of Drug Seized/Items,<sup>[7]</sup> only a representative from the media, one Maeng Santos, a field reporter, witnessed the marking of the purportedly retrieved drug specimens. In *People v. Sipin*<sup>[8]</sup> the Court discussed:

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. *It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence.* It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence. (Italics supplied.)

While there are instances wherein departure from the procedures is allowed, it is incumbent upon the prosecution to (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.<sup>[9]</sup> Specifically, it must be alleged and proved that the presence of these insulating witnesses to the physical inventory and photograph of the seized illegal drugs was not obtained because:

x x x (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any persons acting for and in his/her behalf; (3) the elected officials 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 futile through no fault of the arresting officers, who face the threat of being charged