



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 237422

Present:

GESMUNDO, *CJ.*,
Chairperson,
 HERNANDO,
 ZALAMEDA,
 ROSARIO, and
 MARQUEZ, *JJ.*

-versus-

Promulgated:

BEN G. BATION,
 Accused-Appellant.

FEB 14 2024

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DECISION

HERNANDO, J.:

On appeal is the July 20, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01985 affirming the December 9, 2014 Judgment² of the Regional Trial Court (RTC), Branch 46 of Larena, Siquijor in Criminal Case No. 1510, which found accused-appellant Ben G. Bation guilty beyond reasonable doubt of violating Section 16, Article II of Republic Act No. 9165,³ otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

¹ *Rollo*, pp. 4–14. The July 20, 2017 Decision in CA-G.R. CR-HC No. 01985 was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (now a retired Member of this Court) and Geraldine C. Fiel-Macaraig of the Nineteenth Division, Court of Appeals, Cebu City.

² *CA rollo*, pp. 55–73. The December 9, 2014 Judgment in Criminal Case No. 1510 was penned by Judge Alejandro S. Bahonsua, Jr. of Branch 46, Regional Trial Court, Larena, Siquijor.

³ Republic Act No. 9165 (2002), An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes.

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The Factual Antecedents

The Information⁴ dated March 3, 2010 charging Bation with illegal planting and cultivation of *marijuana*, reads:

That on or about 5:50 . . . in the morning of March 1, 2010 in Kinamandagan, Lazi, Siquijor and within the jurisdiction of this Honorable Court, the above-named accused without any legal authority, did then and there wilfully and unlawfully plant, cultivate[,] and culture marijuana as he indeed was caught in the act by the police authorities watering and tending the said plants considered dangerous drug [sic] under the law.

CONTRARY TO LAW.⁵

Bation pleaded not guilty.⁶

Version of the Prosecution

In the evening of February 28, 2010, the police station of Lazi, Siquijor received intelligence information from a confidential informant that since 2009, Bation, with a cohort, have been planting and cultivating *marijuana* in a bushy area near his house in Barangay Kinamandagan.⁷ The Chief of Police, Police Inspector (PI) Edgar Almaden briefed the police officers for the conduct of an anti-illegal drug operation against Bation.⁸ A team was created comprising: PI Almaden, Senior Police Officer (SPO) 4 Teofilo Ates, Police Officer (PO) 3 Jeanjo Gallegos, PO3 Elvin Eleccion, PO3 Alan Garnica, PO1 Marlon Parol, PO1 Ianne Fortich, and PO1 Dindo Zerna.⁹ They prepared the necessary documentation and coordination with the Philippine Drug Enforcement Agency.¹⁰

The informant led the police officers to the area where the *marijuana* plants are located.¹¹ Upon their arrival at around 1:00 a.m. (now March 1, 2010), the informant pointed out to the police officers 15 grown *marijuana* plants planted on seven plastic pots and two poly bags.¹² The plants were surrounded by tall grass.¹³ The police officers examined the plants and were able to confirm that these were *marijuana*.¹⁴ Hence, they strategically positioned

⁴ RTC records, p. 1.

⁵ *Id.*

⁶ *Id.* at 29.

⁷ *Rollo*, p. 5.

⁸ *Id.*

⁹ RTC records, p. 9.

¹⁰ *Rollo*, p. 5; RTC records, pp. 9–11.

¹¹ *Rollo*, p. 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

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themselves to wait for the person who could have planted and cultivated the plants.¹⁵ The informant, however, left the area after pointing out the plants.¹⁶

At around 5:50 a.m., the police saw Bation carrying a pail and a plastic bag approaching the plants.¹⁷ Bation took out something from the bag (fertilizer), sprinkled it on the plants, and watered them.¹⁸ PO1 Zerna, who was positioned at a vantage point, took a photograph of Bation.¹⁹ When Bation was about to finish watering the plants, the police officers came out of hiding and arrested him.²⁰

PI Almaden called Barangay Captain Arsenio Bayubay and *Kagawad* Jennifer Tambajuyot to the scene.²¹ When they arrived, PO1 Zerna took their photos with Bation and the plants.²² PO3 Eleccion then started to inventory the seized plants but it proved to be difficult so they decided to continue the inventory at the police station.²³ Only the taking of photographs was done at the site.²⁴

Gibb Almaden, a representative from the Department of Justice (DOJ), was present at the police station.²⁵ The police tried to procure a representative from the media but no one was available.²⁶ Thus, PO3 Eleccion continued the conduct of inventory in the presence of the DOJ representative and barangay officials. He placed markings on the seven pots and two poly bags that contain the *marijuana*;²⁷ took samples from each of the 15 plants, and placed each sample in separate plastic sachets, which he also marked.²⁸ PO3 Eleccion also prepared a Certificate of Inventory²⁹ and an Inventory of Property Seized,³⁰ which he and the witnesses signed. PI Almaden, meanwhile, prepared a request for laboratory examination.³¹

Later in the evening of March 1, 2010, SPO1 Avelino B. Gonzales brought the 15 samples to the crime laboratory in Dumaguete City for forensic examination.³² The samples were received by Police Chief Inspector Josephine

¹⁵ *Id.*

¹⁶ *CA rollo*, p. 57.

¹⁷ *Rollo*, p. 5.

¹⁸ *Id.*

¹⁹ *Rollo*, pp. 5–6. See RTC records, p. 47.

²⁰ *Rollo*, p. 6.

²¹ *Id.*

²² *Id.*

²³ *Rollo*, p. 6, TSN, SPO1 Elvin Perater Eleccion, February 13, 2012, p. 14.

²⁴ RTC records, p. 47.

²⁵ *Rollo*, p. 6.

²⁶ *Id.*

²⁷ *CA rollo*, p. 58.

²⁸ *CA rollo*, p. 58, *rollo*, p. 6.

²⁹ See *CA rollo*, p. 58.

³⁰ *Id.*

³¹ *Id.*

³² *CA rollo*, p. 58; *Rollo*, p. 6.

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Llena, who subsequently placed her own markings therein.³³ She conducted a qualitative examination, which yielded positive for the presence of *marijuana*, a dangerous drug.³⁴

Version of the Defense

Bation invoked the defense of denial. He claimed that at around 5:30 a.m. of March 1, 2010, he went outside to gather some foliage for his cow and fed his goats.³⁵ He then defecated outside as their toilet was in disrepair; he was carrying a pail of water for washing himself.³⁶ He was surprised when SPO1 Gonzales appeared and pointed a gun at him.³⁷ The police brought him to the area where the *marijuana* plants are located.³⁸ The land is owned by a certain "Bayuyong," and is located around 150 meters away from the road and 300 meters away from his house.³⁹ The other police officers poured water in the pail; then they pointed a gun at him and forced him to water the plants.⁴⁰ PI Almaden and SPO1 Gonzales left to fetch the barangay officials while he was made to wait on a spot away from the plants.⁴¹ The barangay officials arrived but no inventory was conducted.⁴² Thereafter, they brought Bation to the police station and locked him inside the cell.⁴³ The police officers took photos at the site and at the police station.⁴⁴ He had no prior misunderstanding with any of the police officers.⁴⁵ He knew SPO1 Gonzales and PO1 Parol because he always sees them in town.⁴⁶

Ruling of the Regional Trial Court

In its December 9, 2014 Judgment,⁴⁷ the RTC convicted Bation of violation of Section 16 of Republic Act No. 9165 for planting and cultivating dangerous drugs and sentenced him to suffer the penalty of life imprisonment and to pay a fine of PHP 6 million.

³³ *Id.*

³⁴ *Rollo*, p. 6; RTC records, p. 14.

³⁵ *Rollo*, p. 7.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ TSN, Ben G. Bation, June 4, 2014, pp. 5 and 7.

⁴⁷ *CA rollo*, pp. 55-73.

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The RTC ruled that the elements of the crime were present. The prosecution was able to show that Bation planted the 15 *marijuana* plants.⁴⁸ His acts of watering and fertilizing the plants showed that he was the owner, planter, and cultivator of the dangerous drug in violation of Section 16 of Republic Act No. 9165.⁴⁹ Further, Bation had no authority to engage in the planting and cultivation of *marijuana*.⁵⁰

There was a valid warrantless arrest because Bation was caught in the act of committing an offense when he was tending the plants.⁵¹ Bation's defense of denial was uncorroborated, and cannot overcome the presumption of regularity of the police officers' acts.⁵²

There was substantial compliance with the chain of custody.⁵³ The initial conduct of inventory at the site and its continuation in the police station were justified under the implementing rules of Republic Act No. 9165 which allows for the conduct of inventory in the nearest police station in cases of warrantless arrests.⁵⁴ The absence of the media representative as witness was also justified: the police officers tried to contact the representative but no one answered the call.⁵⁵ The integrity of the seized items was preserved because the movements from seizure to presentation in court can be properly traced through the markings, documentation, and testimonies of the prosecution's witnesses.⁵⁶

The dispositive portion of the RTC Judgment reads:

WHEREFORE, finding accused **BEN G. BATION** guilty beyond reasonable doubt of **Violation of Sec. 16, Art. II of R.A. 9165**, he is hereby sentenced to suffer the penalty of **life imprisonment** and ordered to pay the fine of Six Million Pesos (Php6,000,000.00).

The items confiscated from him are hereby ordered confiscated in favor of the government and to be disposed of in accordance with law. With respect to the fifteen (15) tape-sealed plastic packs of marijuana leaves and dried stems of marijuana, however, pursuant to Sec. 21, Art. II of R.A. 9165, the Philippine Drug Enforcement Agency (PDEA) is directed to immediately take custody and to properly dispose the same.

⁴⁸ *Id.* at 61.

⁴⁹ *Id.*

⁵⁰ *Id.* at 65.

⁵¹ *Id.* at 61-64.

⁵² *Id.* at 64-65.

⁵³ *Id.* at 68-73.

⁵⁴ *Id.* at 68.

⁵⁵ *Id.*

⁵⁶ *Id.* at 72.

There is no need, though, to proceed with the confiscation of the land and be escheated in favor of the government because the marijuana were planted in movable pots that could be have been [sic] transferred from one property to another; besides, the prosecution seems not interested in such a proceeding as it did not even exert effort to get the description of the land and identity [sic] the owner.

SO ORDERED.⁵⁷

Aggrieved, Bation appealed his conviction to the CA.⁵⁸ In his Appellant's Brief,⁵⁹ he argued that the warrantless search was illegal because it was not incidental to a lawful arrest; and that a lawful arrest must precede the warrantless search.⁶⁰ In this case, the process was reversed. The search of the *marijuana* plants preceded the arrest of Bation.⁶¹ After they came upon the *marijuana* plants, they just waited to arrest the person whom they will see tending and cultivating the plants, who happened to be Bation who was in the vicinity to tend to his animals and defecate.⁶²

Bation claimed that the plain view doctrine does not apply⁶³ because the police officers did not inadvertently come across the plants; on the contrary, they purposely went to the area and waited for him to arrive.⁶⁴ A search warrant should have been procured; as there was none, the seized *marijuana* plants are inadmissible, and acquittal, therefore, is proper.⁶⁵

Assuming the search and seizure were valid, his acquittal is still in order because the police officers failed to comply with the chain of custody as follows: (a) the inventory was not done at the crime scene; (b) the marking ("BGB," which stands for Bation's initials) did not follow the prescribed procedure; (c) there was no representative from the media during inventory; (d) there were inconsistencies as to who transmitted the seized items to the forensic laboratory; and (e) one of the police officers who had custody of the seized items after seizure was not presented in court.⁶⁶ These lapses, according to Bation, constitute a substantial gap in the chain of custody, which render the identity and integrity of the *corpus delicti* dubious.⁶⁷

⁵⁷ *Id.* at 73.

⁵⁸ RTC Records, pp. 200 and 204.

⁵⁹ CA *rollo*, pp. 28-54.

⁶⁰ *Id.* at 40.

⁶¹ *Id.*

⁶² *Id.* at 41.

⁶³ *Id.* at 42-46.

⁶⁴ *Id.* at 45.

⁶⁵ *Id.* at 47.

⁶⁶ *Id.* at 48-50.

⁶⁷ *Id.* at 50.

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The prosecution filed its Appellee's Brief.⁶⁸ It argued that the police never made an intrusion when they found the *marijuana* plants; they did not enter any private property and merely conducted an ocular inspection.⁶⁹ The property where the plants were found was not owned by Bation.⁷⁰ These circumstances did not necessitate a search warrant as there was no intrusion into a property.⁷¹ Moreover, Bation was validly arrested without a warrant because he was caught in the act of committing a crime, i.e., in watering the *marijuana* plants.⁷²

The prosecution further argued that the integrity and evidentiary value of the seized items were preserved. The rules allow marking and inventory to be conducted at the nearest police station.⁷³ The absence of the media representative and the alleged improper markings on the seized items do not exculpate the accused.⁷⁴ Substantial compliance with the rules on chain of custody is allowed.⁷⁵ The prosecution insisted that the integrity and evidentiary value of the seized items were preserved as shown by evidence.⁷⁶

Bation no longer filed a reply brief.⁷⁷

Ruling of the Court of Appeals

In its July 20, 2017 Decision,⁷⁸ the CA affirmed Bation's conviction. The search and seizure of the *marijuana* plants,⁷⁹ and the arrest were valid because he was caught in the act of cultivating *marijuana* plants.⁸⁰ The warrantless search was justified as the plants were found in Bation's possession and within his immediate control during his arrest.⁸¹ The CA also stated that the plain view doctrine is not applicable because the search was deliberate, and not inadvertent, when the police officers searched Bation upon his arrest.⁸²

⁶⁸ *Id.* at 91–110.

⁶⁹ *Id.* at 100.

⁷⁰ *Id.*

⁷¹ *Id.* at 101.

⁷² *Id.* at 101–102.

⁷³ *Id.* at 103.

⁷⁴ *Id.* at 103–107.

⁷⁵ *Id.* at 104–105.

⁷⁶ *Id.* at 105–107.

⁷⁷ *Id.* at 111–113.

⁷⁸ *Rollo*, pp. 4–14.

⁷⁹ *Id.* at 9–10.

⁸⁰ *Id.*

⁸¹ *Id.* at 10.

⁸² *Id.*

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Further, the CA held that the rule on the chain of custody was satisfied.⁸³ The marking conducted in the police station is allowed by the rules.⁸⁴ The absence of the media representative is justified as PO1 Almaden exerted efforts in reaching out to the media representative but to no avail.⁸⁵ Nonetheless, the prosecution was able to preserve the integrity and evidentiary value of the seized items: the items that were seized were the very same items presented in the trial court.⁸⁶

The dispositive portion of the CA Decision reads:

WHEREFORE, the appeal is DENIED. The Judgment dated December 9, 2014 of the Regional Trial Court, Branch 46, Larena, Siquijor in Criminal Case No. 1510 is hereby AFFIRMED.

SO ORDERED.⁸⁷

Bation elevated his case to this Court.⁸⁸ The parties opted not to file appeal briefs anew.⁸⁹

Issue

Is Bation's conviction proper?

Our Ruling

The appeal has merit. The Court acquits Bation of the crime charged.

At the outset, the Court holds that Bation was validly arrested as he was caught in the act of committing a crime.

Under Section 5, Rule 113 of the Rules of Court, a warrantless arrest may be made under the following circumstances:

Section 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his [or her] presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

⁸³ *Id.* at 11–13.

⁸⁴ *Id.* at 11–12.

⁸⁵ *Id.* at 12.

⁸⁶ *Id.* at 12–13.

⁸⁷ CA *rollo*, p. 128.

⁸⁸ *Rollo*, pp. 15–17, 18–19.

⁸⁹ *Id.* at 30–35, 36–39.

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(b) When an offense has just been committed, and he [or she] has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he [or she] is serving final judgment or is temporarily confined while his [or her] case is pending, or has escaped while being transferred from one confinement to another . . .

For an arrest effected under Section 5 (a), Rule 113 to be valid, it is required that: (a) the person to be arrested must execute an overt act indicating that he or she has just committed, is actually committing, or is attempting to commit a crime; and, (b) such overt act is done in the presence or within the view of the arresting officer.⁹⁰

Bation was caught *in flagrante delicto* of cultivating plant sources of dangerous drugs when he fertilized and watered the *marijuana* plants. It is undisputed that the plants he cultivated came out positive for *marijuana*, a dangerous drug, after laboratory examination.⁹¹

The warrantless search of the property prior to his arrest was valid. There was no invalid intrusion as the plants were located in an open area visible to passersby. The decision of the police officers to wait out and arrest the person who cultivates the plants, instead of obtaining a search warrant, is a valid course of action. This course of action resulted to Bation being caught *in flagrante delicto*, leading to his arrest.

Assuming the warrantless search was invalid, Bation cannot argue against the unreasonable search. He is neither the owner nor the occupant of the property where the *marijuana* plants were discovered, which is around 300 meters away from his house. He admitted that he was not the owner of the property and that a certain "Bayuyong" is the owner.⁹²

The right to contest the legality of a seizure belongs only to the party whose rights have been impaired.⁹³ The right is personal, and only a party whose rights were violated can assail the act and move to exclude the evidence gathered pursuant to the act.⁹⁴ A person who is not the owner or legal occupant of the place cannot validly give consent to the search therein.

⁹⁰ *People v. Dalisay*, G.R. No. 258060, August 16, 2023 [Per J. Caguioa, Third Division].

⁹¹ *Rollo*, p. 6; RTC records, p. 14.

⁹² *Rollo*, p. 7.

⁹³ See *Stonehill v. Diokno*, 126 Phil. 738, 745 (1967) [Per C.J. Concepcion, *En Banc*].

⁹⁴ *Id.*

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Thus, Bation cannot raise the defense that there was an invalid search of the *marijuana* plants leading to his arrest.

In any event, the acquittal of Bation is proper due to non-compliance by the police officers with the rule on chain of custody for failure to observe the three-witness requirement.

Bation was charged with *Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof* under Section 16 of Republic Act No. 9165. To successfully prosecute this offense, the prosecution must show that the rule on chain of custody in Section 21 of the same law has been observed. The relevant portions of Section 21, before its amendment,⁹⁵ read:

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 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

....

The provision covers violations of Section 16 as it includes dangerous drugs and plant sources of dangerous drugs. Thus, the three-witness requirement applies to seizure of cultivated plant sources of dangerous drugs.

To avoid frame ups or wrongful arrests of persons suspected to be violators of the law,⁹⁶ Section 21 requires the presence of three witnesses, namely: a representative from the media, a representative from the DOJ, and an elected

⁹⁵ Republic Act No. 9165 applies as the offense was committed on March 1, 2010, before the passage of the amendatory law.

⁹⁶ *People v. Baluyot*, 887 Phil. 173, 192 (2020) [Per J. Hernando, Second Division].

public official, during the marking, inventory, and photograph of the seized items. The presence of three witnesses prevents the possibility of planting evidence on the person or effects of the accused.⁹⁷ The prosecution must allege and prove that the witnesses were present during the marking, inventory, and photograph of the seized items.⁹⁸

This rule, strict it may be, has exceptions. Absence of one or more of the witnesses may be excused, as stated in *People v. Baluyot*,⁹⁹ citing *People v. Lim*.¹⁰⁰

Indubitably, this strict requirement is subject to exceptions as well. The case of *People v. Lim* holds that in the event of absence of one or more of the witnesses, the prosecution must allege and prove that their presence during the inventory of the seized items was not obtained due to reasons such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and 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 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.

The prosecution must show that the apprehending officers employed earnest efforts in procuring the attendance of witnesses for the inventory of the items seized during the buy-bust operation. Mere statements of unavailability of the witnesses given by the apprehending officers are not justifiable reasons for non-compliance with the requirement. This is because the apprehending officers usually have sufficient time, from the moment they received information about the alleged illegal activities until the time of the arrest, to prepare for the buy-bust operation that necessarily includes the procurement of three (3) witnesses. If one of the individuals invited refuses to participate as witness, the apprehending officers can still invite another individual to become a witness.¹⁰¹ (Citations omitted)

In this case, only a representative from DOJ and two elected public officials were present during the marking, inventory, and photograph of the seized items.¹⁰² There was no representative from the media.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ 887 Phil. 173 (2020) [Per J. Hernando, Second Division].

¹⁰⁰ 839 Phil. 598, 621–622 (2018) [Per J. Peralta, *En Banc*].

¹⁰¹ *People v. Baluyot*, 887 Phil. 173, 192–193 (2020) [Per J. Hernando, Second Division].

¹⁰² *Rollo*, p. 6.

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In his direct examination, PO3 Eleccion admitted the absence of a media representative during the operation explaining that nobody answered when they called *Siquijor Mirror*, the media outlet. The pertinent portions of the testimony are as follows:

[Transcript of Stenographic Records
February 13, 2012

Direct Examination of PO3 Eleccion]

....

Prosecutor Ulysses C. Andora

Q. Observably Mr. Witness, there are signatures of the witnesses during the inventory, where were you when these signatures were affixed?

A. I was present, Your Honor.

Q. Observably, Officer Eleccion, for the portion intended for the name and signature of the media as one of the witnesses, it is left blank, why is this so?

A. Yes, Your Honor, because Inspector Almaden called up the *Siquijor Mirror* at that time but nobody answered their cellular phone.

Q. So, for that reason, only witnesses from the DOJ and from two barangay officials were reflected in the document?

A. Yes, Your Honor.

Q. By the way, based on your knowledge, where can you contact the media for the purpose?

A. Inspector Almaden used to call up the cellular phone of the media representative in the person of Mr. Aresgado.

Q. Where is the business address of this particular media representative?

A. Somewhere in Larena, Siquijor, Your Honor.

Q. And that is how many towns away from Lazi Police Station?

A. Two towns.¹⁰³

The prosecution conceded in its Appellee's Brief that there was no representative from the media.¹⁰⁴ But it asserted that the integrity and evidentiary value of the seized items were duly preserved.¹⁰⁵

The prosecution failed to explain satisfactorily the absence of the representative from the media. That nobody is answering the telephone and that the media outlet is two towns away fail to convince. The police officers could

¹⁰³ CA rollo, pp. 70-71.

¹⁰⁴ *Id.* at 103.

¹⁰⁵ *Id.* at 104-106.

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have reached out to another media outlet and not limited themselves to *Siquijor Mirror*. That the outlet is two towns away from the site likewise did not help their position.

Aside from these lame excuses, the records show that the police officers did not exert earnest efforts in locating another media representative. Substituting the media representative with another elected public official does not suffice as the law is clear with the designation of the required witnesses.¹⁰⁶

The prosecution cannot rely on the saving clause in Section 21 of the Implementing Rules and Regulations of Republic Act No. 9165.¹⁰⁷ Even if it recognized the lapse,¹⁰⁸ the prosecution's explanations on the absence of the required witness, as stated, do not justify the requirement.

In fine, there was non-compliance with the provisions of Section 21, in particular, with the number of required witnesses during the marking, inventory, and photograph of the seized items. This failure produces a gap in the chain of custody that adversely affects the integrity and evidentiary value of the seized plants. The identity of the object of the offense was therefore not properly established.

As a result, Bation's acquittal is warranted.

ACCORDINGLY, the appeal is **GRANTED**. The July 20, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01985 is **REVERSED** and **SET ASIDE**. Accused-Appellant Ben G. Bation 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 Decision be furnished the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. Furthermore, the Director General is **DIRECTED** to report to this Court the action he has taken within five days from receipt of this Decision.

Let entry of judgment be issued immediately.

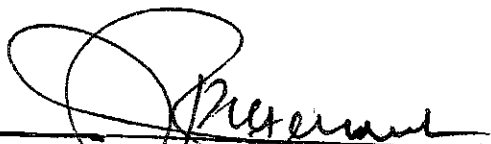
¹⁰⁶ Republic Act No. 9165 (2002), sec. 21.

¹⁰⁷ Implementing Rules and Regulations of Republic Act No. 9165 (2002), sec. 21.

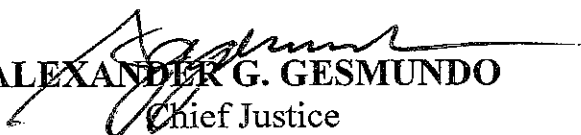
¹⁰⁸ See *People v. Bahuyot*, 887 Phil. 173, 194 (2020) [Per J. Hernando, Second Division].

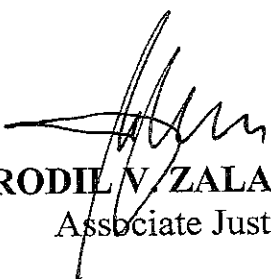
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SO ORDERED.

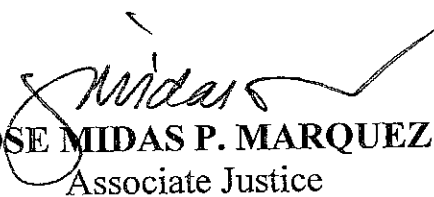

RAMON PAUL L. HERNANDO
Associate Justice
Working Chairperson

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson


RODIL N. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

