

PEOPLE OF THE PHILIPPINES, PLAINTIFF -APPELLEE, VS. MELCHOR RUBIN, ACCUSED-APPELLANT

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant of the Decision[1] dated April 30, 2008, of the Regional Trial Court, Sixth Judicial Region, Branch 53, Bacolod City, in Crim. Case No. 03-24806 finding accused-appellant guilty of Violation of Sec. 5, Article II of RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE FACTS:

Version of the Prosecution

Accused-appellant Melchor Rubin was in the Top 10 Order of Battle in the Bacolod City Police Office in the proliferation of illegal drugs. He was known to be a notorious drug dealer in Bacolod City.

Around 4:30 PM, on May 2, 2003, the Bacolod Police Office received information from a civilian asset that accused-appellant was engaged in the sale of illegal drugs in Purok Sigay, Barangay 2, Bacolod City. Subsequently, a team was composed consisting of the City Mobile Group, operatives of the Police Precinct 2 and units of the Regional Mobile Group to conduct a buy-bust operation against accused-appellant. P/SInsp. Clarence Dungail was assigned as team leader while PO2 Roel Villacanas was designated as poseur-buyer. P/SInsp Dungail instructed PO2 Villacanas to buy “isa ka bulto” (average of five grams) worth P 7,000.00. Two marked one-hundred-peso bills with serial numbers CF643519 and ET662052 were prepared as part of the buy-bust money.

Around 7:00 PM, the team members arrived in Purok Sigay. PO2 Villacanas approached accused-appellant who was then standing in the alley. PO2 Villacanas then handed over the money to accused-appellant and in turn, the latter took the heat-sealed plastic pack containing undetermined white crystalline substance which was suspected to be shabu from his right pocket and gave it to the former. Upon receipt of the plastic pack, PO2 Villacanas announced that he was a police officer and effected accused-appellant's arrest. Accused-appellant was subsequently brought to Police Station No. 2 where he was booked and detained.

PO2 Villacanas who was in custody of the shabu, placed “ROV” on the packet of shabu and delivered the same together with the letter-request to the Crime Laboratory. Said specimen was received b P/SInsp Alexis Guinanao and the laboratory examination yielded positive for methamphetamine hydrochloride in Chemistry Report2 No. D-229-2003.

The Charge

In the Information[3] dated May 5, 2003 filed against accused-appellant, he was charged with the crime of

Violation of Section 5, Article II of RA No. 9165 as follows:

“That on or about the second day of May, 2003, in the City of Bacolod, Philippines, within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur buyer in a buy-bust operation one (1) big, heat-sealed transparent plastic packet containing methylamphetamine hydrochloride weighing 4.43 grams in exchange for a price of P200.00 in marked money, consisting of two (2) 100.00 peso bills with serial nos. CR 43519 and ET 662052, in violation of the law.”

On June 19, 2003, accused-appellant was arraigned and pleaded “not guilty” to the crime charged.

Trial ensued. The prosecution presented the following as witnesses: PS/I Alexis Guinanao, PO2 Ruel Villacanas and P/SInsp Clarence Dungail. On the other hand, Ireneo Villarma and accused-appellant testified in his defense.

Version of Accused-appellant

Accused-appellant narrated that he was talking to his kumpare Ireneo Villarma when he was suddenly grabbed by three men and carried bodily to a waiting police car outside the main road. Accused-appellant was not informed of anything he did wrong or the reason why he was being taken away. He was not informed of the reason why he was being arrested. He was brought to BAC-Up 2 where he vehemently denied that he was engaged in the sale of illegal drugs. He denied handing the policemen any sachet of shabu or that anybody approached him. Accused-appellant testified that he knew the policemen beforehand and identified them. He likewise claimed that the money he allegedly received belonged to police officer Bejemino and that he took it out from his own pocket.

While detained at BAC-Up 2, accused-appellant claimed that he was maltreated and made to admit that he was selling illegal drugs inside the office of police officer Dungail. Accused-appellant attested that the police officers boxed him and kicked him several times resulting in several contusions on his body. His face was also wrapped with masking tape and a dirty rag was inserted inside his mouth, only slits for his eyes and nose were allowed for him to breathe and see. Thereafter, accused-appellant testified that he was asked to choose from Dungail's drawer several leaves and one plastic sachet. He just replied: “whatever you like, sir.” Accused-appellant never filed a complaint against the police officers and his request for a medical check-up was also denied. Accused-appellant's family went to visit him but they were threatened with a gun and so they backed off. Accused-appellant was then endorsed to the Bacolod City Jail on May 7, 2003, five days after his arrest at Purok Sigay.

The RTC Ruling:

Thereafter, on April 30, 2008, the RTC, Branch 53, rendered a Decision[4] against accused-appellant, the pertinent portion of which reads:

“WHEREFORE, PREMISES CONSIDERED, the court hereby finds the accused MELCHOR RUBIN GUILTY beyond reasonable doubt of the crime charged in the Information. For selling 4.43 grams of shabu (Methylamphetamine Hydrochloride), the accused is hereby sentenced to suffer the penalty, as provided in Section 5, of RA 9165, of life imprisonment and to pay a fine of P 500,000.00 and the costs. The 4.43 grams of shabu are ordered confiscated and to be disposed and destroyed in accordance with law.

SO ORDERED.”

Aggrieved, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning as errors, to wit:

I. “THE COURT A QUO ERRED IN PRONOUNCING MELCHOR RUBIN GUILTY OF VIOLATION OF SECTION 5 OF REPUBLIC ACT 9165 OR SALE OF PROHIBITED DRUGS DESPITE FAILURE OF THE

PROSECUTION TO SHOW THAT A SALE EVER OCCURRED;

II. THE COURT A QUO ERRED IN CONVICTING MELCHOR RUBIN FOR VIOLATION OF SECTION 5 OF REPUBLIC ACT 9165 DESPITE FAILURE OF THE PROSECUTION TO PROVE THE IDENTITY OF THE CORPUS DELICTI; and

III. THE COURT A QUO ERRED IN CONVICTING MELCHOR RUBIN DESPITE FAILURE OF THE PROSECUTION TO ADDUCE EVIDENCE SUFFICIENTLY SHOWING GUILT BEYOND REASONABLE DOUBT.”

Accused-appellant's contentions:

Failure to prove that illegal sale was consummated

Accused-appellant asserts that there is an absence of a clear and categorical manifestation of an overt act showing intent to sell prohibited or dangerous drugs. He points out that in the records, there was a lack of conversation clearly setting out an intention to engage in the sale of illegal drugs such that the prosecution has left the trial court to speculate that an illegal transaction took place. Accused-appellant avers that the cross-examination of PO2 Villacanas proves that no conversation preceded the alleged exchange of the money and dangerous drugs, as follows:

“Atty Natuel: (to witness – cross examination)

Q: Did you not tell him that you are buying one (1) bulto of shabu?

A: No sir, the transaction is automatic, when we arrived we just exchange the money and shabu.

Q: Without instruction that you wanted to buy shabu, immediately you handed the 2 P100.00 bills together with the budol money of yellow pages in between?

A: Yes, sir.”

Accused-appellant stresses the importance of the standards that should be set out in proving the sale of illegal drugs using the objective test which demands that the details of the purported transaction be adequately shown. This must start from the initial contact between the poseur-buyer and pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. However, accused-appellant argues that this test was not followed in the instant case which makes doubtful that an illegal sale of drugs was consummated.

Failure to prove the identity of corpus delicti of the offense

Accused-appellant contends that the dangerous drugs itself constitutes the very corpus delicti of the offense and in sustaining a conviction under RA No. 9165, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. Thus, evidence must show that the illegal drug presented in court is the same illegal drug actually recovered from accused-appellant. However, the chain of custody requirement which ensures that unnecessary doubts concerning identity of evidence are removed failed to perform this function in the case at bar. Accused-appellant maintains that the testimonies of P/Inp Alexis Guinanao, PO2 Roel Villacanas, and P/SInsp Clarence Dungail detailing the handling of items while in custody display a blatant disregard of statutory authentication.

Accused-appellant claims that the testimony of PO2 Roel Villacanas described an adoption of procedure not compliant with the crucial requirement of authentication mandated by Section 21 of RA 9165. Accused-appellant reiterates that PO2 Villacanas was categorical in saying that there was no marking, inventory, and taking of photographs following the recovery of the alleged contraband. Accused-appellant was likewise brought to the police station without the item previously marked at the place of recovery. Hence, accused-appellant asseverates

that uncertainty lingers as to the identity and origin of the confiscated item presented in court. Pertinent is the testimony of PO2 Villacanas, thus:

“Pros. Yngson: (To witness – direct examination)

Q: Mr. witness, after the exchange of this shabu from Melchor Rubin and the marked money, what happened next if any?

A: I identified myself as police officer.

Q: How did you identify yourself, what did you say to the accused?

A: That I am a policeman and he is being arrested for selling shabu.

Q: did you also inform him of his constitutional rights?

A: After he was subdued.

Q: Why did you use the word subdued?

A: Because there was a little resistance on his part.

Q: You said that after you have subdued him, you informed him of his constitutional rights, what are these rights?

A; I told him in Ilonggo version.

Q: “You have the right not to answer questions from the policemen, you have the right to get a lawyer of your own choice.”

Q: What else did you do if any after you have informed him of his rights?

A: Then my companions apprehended him and we brought him to Police Precinct 2 for record purposes.”

TSN August 4, 2003, pp. 22-23

Accused-appellant contends that there was no seized item marked, inventoried and photographed during the incident casting serious doubt as to the truthfulness that there was indeed contraband recovered from him. There was no circumstance attendant to his apprehension that would have prevented compliance with the statutory requirements of authentication. No explanation was given also to justify the absence of marking, inventory and taking of photographs immediately at the place of recovery. Further, accused-appellant posits that there was no detailed testimony in the preservation of the confiscated item when it passed hands from one person to another. In short, there was no detailed account as to the safekeeping undertaken or handling of the confiscated item – how it was managed, stored, preserved, labeled and recorded from the time of its seizure to its receipt by the forensic laboratory up until its presentation in court.

Although accused-appellant agrees that non-compliance with Section 21 (1) of RA 9165 is not necessarily fatal to the prosecution's case, the lapses of the police officers were not recognized and explained adequately which warrants accused-appellant's acquittal.

THIS COURT'S RULING:

The appeal is meritorious.

In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a *sine qua non* for conviction. The dangerous drug is the very *corpus delicti* of the crime of violation of the Dangerous Drugs Act.

In *People vs. Casimiro*,^[5] the Supreme Court acquitted accused-appellant for failure of the prosecution to establish the identity of the prohibited drug which constitutes the *corpus delicti* of the offense charged. Too, in *People vs. Laxa*,^[6] the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the accused-appellant. It was held that this deviation from the standard procedure in the anti-narcotics operations produces doubts as to the origins of the marijuana. This question gives rise to surmises and speculations, and cannot prove beyond reasonable doubt the guilt of

accused-appellant. Then again, in *People vs Partoza*,^[7] the Supreme Court elucidated on the importance of proving the corpus delicti of the offense, enumerating several cases wherein the court favored an acquittal because of failure to prove the corpus delicti, viz:

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“In *People v. Obmiranis*, appellant was acquitted due to the flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from appellant, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibit before it was offered in evidence in court. In *Bondad v. People*, this Court held that the failure to comply with the requirements of the law compromised the identity of the items seized, which is the corpus delicti of each of the crimes charged against appellant, hence his acquittal is in order. And in *People v. de la Cruz*, the apprehending team's omission to observe the procedure outlined by R.A. No. 9165 in the custody and disposition of the seized drugs significantly impairs the prosecution's case.”

Elements of illegal sale of dangerous drugs

In a prosecution for illegal sale of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place; and (2) presentation in court of the corpus delicti or the illicit drug as evidence. ^[8] It bears stressing that the existence of dangerous drugs is a condition sine qua non for conviction for the illegal sale of dangerous drugs, it being the very corpus delicti of the crime.^[9] Vital to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was the same drug recovered from accused-appellant. Therefore, We adopt the chain of custody rule.

Chain of Custody

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.^[10]

The Court cannot close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same, there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing.^[11] Thus, the corpus delicti should be identified with unwavering exactitude. ^[12] To emphasize, in order to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.^[13]

In this case, accused-appellant was allegedly caught selling shabu in a buy bust operation conducted by police officers. A buy-bust operation is a form of entrapment employed by peace officers to apprehend prohibited drug law violators in the act of committing a drug-related offense.^[14] Because of the built-in danger for abuse that a buy-bust operation carries, it is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of people under criminal investigation^[15] and of the accused facing a criminal charge^[16] are safeguarded. The Supreme Court expressed this concern in *People v. Tan*, G.R. No. 133001, December 14, 2000, when it was recognized that by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which

sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

With regards to the buy-bust operation which allegedly transpired, PO2 Ruel Villacanas testified that:

“Atty. Natuel

Q: How did you approach the accused?

Witness

A: I directly went to him, handed my money and he handed the item.

Q: Without telling him that you are looking for shabu, you just handed to him the 2 P100.00 bills?

A: It is already the system in Purok Sigay.” TSN , August 4, 2003, p. 36

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“Q: Did you not tell him that you are buying one (1) bulto of shabu?

A: No sir, the transaction is automatic, when we arrived, we just exchange money and shabu.

Q: Without instruction that you wanted to buy shabu, immediately you handed the 2 P 100.00 bills together with the budol money of yellow pages in between?

A: Yes sir.”

TSN, August 4, 2003, pp. 38-39

On the other hand, P/Insp Clarence Dungail, the other prosecution witness also failed to testify that he saw the actual exchange of shabu and money, thus:

“Q: What was the accused doing when you saw him?

A: I cannot witness on that particular matter sir, considering that the poseur-buyer was the one (sic) transacted illegal drug.

Q: Alright, it was the poseur-buyer who transacted with the accused regarding this illegal trading how far were you when the poseur-buyer approached the accused?

A: About 5 to 10 meters also, sir.

Q: In other words, you were in a hearing distance when they talked with each other?

A: If we will visit the area sir you cannot just conclude that I was in a hearing distance considering that the area is thickly populated and squatter area.

Q: And your alleged poseur buyer of yours was also a member of your PNP?

A: He was assigned at the City Mobile Group as operative, sir. “ TSN, January 17, 2005, pp. 12-13

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Q: Mr witness, lets go back to the place where the accused was actually apprehended what was the accused doing when you saw him in the alley?

A: I cannot recall sir, because as what I have said, it was PO2 Villacanas. TSN, January 17, 2005, p. 19

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Q: It is not a fact that awhile ago you said to my question that you were only about 10 meters distance from the accused when your poseur-buyer actually apprehended them?

A: Yes sir, through a pre-arranged signal sir we immediately proceeded to the area considering that herein accused resisted the arrest during the buy bust operation.

Q: Now this poseur-buyer offered to buy drugs from the accused?

A: What you mean sir?

Q: Requested to buy drugs from the accused, is that correct, have you heard him saying that?

A: I did not hear.

Q: You were not able to hear?

A; Yes sir.

Q: But when this poseur-buyer handed this did this poseur buyer handed the bundle of budol money to the accused when he approached the accused?

A: I cannot testify on that sir as I have said the location of the buy bust was not visible in my location.

Q: And you have not seen him also getting something from his body and delivered to your poseur-buyer?

A: Yes sir. “

TSN, January 17, 2005, pp. 24-25

From the testimonies of the two prosecution witnesses, it appears that a buy-bust operation was not clearly established by the prosecution.

The mandated procedure on the seizure and custody of drugs is detailed in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

(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[.]

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which reads:

(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.

Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[17]

It was argued by accused-appellant that the essential element of identity of the corpus delicti is lacking due to absence of strict compliance with the mandatory provisions of Section 21, of RA 9165. He asserts that the corpus delicti was not established in accordance with said Section 21. Accused-appellant enumerates the following lapses of the police operatives in the conduct of the buy-bust operation, viz:

(1)

The identity of the corpus delict, shabu, was not established in accordance with RA No. 9165;

(2)

There was no proper marking and inventory in the crime scene immediately after seizure and confiscation of the alleged shabu made by the police officer who had initial custody thereof;

(3)

No photographs of the suspected shabu were taken, not in the presence of accused-appellant or his counsel or the persons from whom said item was confiscated or his representative or counsel from the media and the DOJ or any elected public official.

(4)

The arresting officer did not apprise accused-appellant of his constitutional rights;

(5)

No detailed receipt of the confiscated shabu was issued to accused-appellant.

(6)

The specimen was taken by the apprehending officers from accused-appellant on May 2, 2003 while it was only brought to the PNP Crime Laboratory, that is, two days after, on May 5, 2003.

The records show that the buy-bust team failed to follow the outlined procedure despite its mandatory terms. The prosecution failed to establish the chain of custody of the seized plastic sachet containing shabu subject of the alleged sale. The prosecution witnesses failed to adequately explain how the corpus delicti transferred hands from the time it was supposedly confiscated from accused-appellant to the time it was presented in court as evidence. They have not satisfactorily shown that there was no gap in the chain of custody of the seized shabu when it transferred hands.

Vital links in the chain of custody

The first link in the chain of custody starts with the seizure of the plastic sachet from accused-appellant. PO2 Villacanas mentioned that he placed his initials "ROV" on the confiscated sachet after apprehending accused-appellant. Notably, this testimony constituted the totality of the prosecution's evidence on the marking of the seized evidence. PO Villacanas' testimony lacked a detailed account on how he marked the sachet and who witnessed the marking. In *People v. Martinez*, G.R. No. 191366, December 13, 2010, the High Court ruled that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation. In the instant case, nothing in the records gives us a clear insight on the manner and circumstances that attended the marking of the confiscated sachet.

The second link in the chain of custody is its turnover of the seized shabu from PO2 Villacanas to P/Insp Clarence Dungail. However, it should be pointed out that in handing over to P/Insp Dungail the confiscated sachet, there was no acknowledgment receipt thereof. There was no clear narration either as to what time P/Insp Dungail arrived at the scene. It appears that he came into the picture only after the arrest of accused-appellant. As mentioned earlier, he did not witness the transaction that took place between poseur-buyer and accused-appellant.

The records do not show that P/Insp Dungail saw the markings made by PO2 Villacanas in the presence of accused-appellant. Nor do the records prove that he witnessed the consummation of the sale or that he saw PO2 Villacanas confiscate the alleged drug from accused-appellant as he testified that the area was dimly lit. Contrary to the findings[18] of the court a quo, the records show that it was actually PO2 Villacanas who had custody of

the seized sachet at the time of its transportation to the police station and not P/Insp Dungail. The records are likewise bereft of any details as to the taking of inventory of the seized sachet.

Too, the prosecution failed to present proof pertaining to the identity of the duty desk officer of the police station who received the plastic sachet containing shabu from the buy-bust team or that PO2 Villacanas had custody of the seized item during this period or where he kept the said item for safekeeping. This is particularly significant since the seized specimen was turned over to the PNP Crime Laboratory only on May 5, 2003, and not immediately after its seizure on the same day, on May 2, 2003. It was not, therefore, clear who had temporary custody of the seized item during this significant intervening period of time. Although the records show that the request for laboratory examination of the seized plastic sachet was prepared by P/Insp Dungail, the evidence does not pinpoint who received the marked plastic sachet when it was brought to the police station. We cannot discount even the smallest possibility that other persons besides PO2 Villacanas had access to the seized drugs tampered with the evidence inside during this intermittent period pending its delivery to the crime laboratory.

We reiterate that there is no testimony regarding the taking of inventory of the confiscated drugs. Such an irregularity in procedure was not even explained by the prosecution witnesses.

It is to be noted also that there were no photographs of the suspected shabu that were taken – not in the presence of the accused or the person from whom such items were confiscated or seized, or his representative or counsel or a representative from the media and the DOJ and any elected public official who are required to sign the copies of the inventory and given a copy thereof. Any kind of explanation was not offered for this omission by the police operatives.

Another crucial link in the chain of custody pertains to transfer of the seized drugs from the police station to the Crime Laboratory for examination. The records reveal that PO2 Villacanas brought the confiscated shabu to the PNP Crime Laboratory for laboratory examination only on May 5, 2003,[19] that is, two days after the same was seized from accused-appellant. There is no proof in the records of the name of the officer or personnel of the crime laboratory who received the specimen. Thus, there is another gap in the chain of custody. P/Insp Alexis Guinanao, forensic chemical officer, merely testified that she conducted an examination on the specimen which tested positive for methamphetamine hydrochloride. Her testimony is bereft of proof that the seized shabu was properly kept and safeguarded pending its presentation in court. That the prosecution offered in evidence the request for laboratory examination as well as the Chemistry Report has no materiality on the question of whether the specimen submitted for chemical analysis and subsequently presented in court was the same as that seized from the accused-appellant. All that these exhibits proved were the existence and authenticity of the request for laboratory examination and the results of this examination, not the required chain of custody from the time of seizure of the evidence. Otherwise stated, the identity of the person who had the custody and safekeeping of the drugs after its examination by P/Insp Guinanao pending presentation in court is absent which creates a missing link in the chain of custody. Likewise, she testified that she could not determine adulteration because what she conducted only was qualitative examination.

P/Insp Guinanao testified as follows:

Q: Madam witness, are you aware that the alleged specimen were taken by the apprehending officers on May 2nd, 2003?

A: As it appears on the letter request I happened on May 2, 2003, sir.

Q: It was only submitted by the apprehending officer to your office on May 5, 2003?

A: Yes sir, because I understand that May 2 is a Friday and May 5, is a Monday.

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Q: When you conducted your examination, did you examine the entire item as appearing on this plastic bag?

A: In the weighing of the sample, I weigh the entire specimen, however, when I conducted the examination, I only took a representative sample from the entire specimen submitted.

Q: You mean the entire specimen was not examined, you only took a sample?

A: Yes sir.”

TSN, July 23, 2003, pp. 20-23

In totality, personnel within the police hierarchy surely must have handled the drugs but evidence of how this was done, i.e., how it was managed, stored, preserved, labeled and recorded from the time of its seizure, to its receipt by the forensic laboratory, up until it was presented in court and subsequently destroyed — is wanting from the evidence adduced during the trial.

We are guided by *Lopez v. People* G.R. No. 172953, April 30, 2008 on how we expect the chain of custody or "movement" of the seized evidence to be maintained and why this must be shown by evidence: “While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not really identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.”

In relation thereto, in *Malillin v. People*, G.R. No. 172953, April 30, 2008, the Supreme Court explained that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it is offered in evidence, in such a way that every person who touched it would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The procedural lapses mentioned above show the glaring gaps in the chain of custody, creating a reasonable doubt whether the drugs confiscated from the accused-appellant were the same drugs that were brought to the crime laboratory for chemical analysis, and eventually offered in court as evidence. In the absence of concrete evidence on the illegal drugs bought and sold, the body of the crime — the corpus delicti — has not been adequately proven.[20] Evidently, the prosecution has not proven the indispensable element of corpus delicti of the crime which failure produces grave doubt as to the guilt of the accused-appellant. In criminal cases, proof beyond reasonable doubt is required to establish the guilt of the accused. Similarly, in establishing the corpus delicti, that unwavering exactitude is necessary. Every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

Non justification for the non-compliance
of Sec. 21, RA No. 9165

We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. For this reason, the last sentence of the implementing rules provides 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." Accordingly, noncompliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case.

These lapses, however, must be recognized and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.[21] The irregularities in procedure in the case at bar were not even explained nor acknowledged by the police operatives.

Verily, in *People v. Pringas*,^[22] the High Court stressed that: “ what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.” In this case, the integrity and the evidentiary value of the items involved were not safeguarded. The prosecution did not bother to offer any explanation to justify the failure of the police officers to comply with the mandatory procedures under Section 21. Specifically, there was no justification for the omission to take photographs of the seized drugs when there was ample time to do so considering this was a buy bust. In *People vs Morales*, GR No. 172873, March 19, 2010, the Supreme Court held that failure to comply with this particular rule without any justification for said omission warrants the acquittal of the accused. Then again, the apprehending team failed to show why there was no receipt of inventory made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. Stated otherwise, the justifiable grounds for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist. Here, there were indeed lamentable lapses committed by police officers which were not explained by them.

Accused-appellant's acquittal must stand in view of the substantial gaps in the chain of custody of the seized drugs discussed earlier, creating serious doubt as to the corpus delicti of the offense. Apropos in *Salonga*,^[23] the Supreme Court, citing *People vs. Guzman*,^[24] elucidated, that:

“The gaps in the chain of custody creates a reasonable doubt as to whether the specimens seized from the accused were the same specimens brought to the laboratory and eventually offered in court as evidence. Without adequate proof of the corpus delicti, the conviction cannot stand.”

WHEREFORE, the appeal is GRANTED. The Decision dated April 30, 2008, of the Regional Trial Court, Sixth Judicial Region, Branch 53, Bacolod City, in Crim. Case No. 03-24806, is REVERSED and SET ASIDE. Accused-appellant Melchor Rubin is ACQUITTED on reasonable doubt. Let a copy of this Decision be furnished to the Director of Prisons, Bureau of Corrections, Muntinlupa City, who is ORDERED to cause the immediate release of accused-appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken within five (5) days from notice.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

[1] Rollo, p. 66

[2] Records, p. 70

[3] Records, p.1 4 Rollo, p. 66

[5] GR No. 146277, June 20, 2002

[6] GR No. 138501, July 20, 2001

[7] GR No. 182418, May 8, 2009,

[8] *People v. Hajili*, 447 Phil. 283, 295 (2003).

[9] *People v. Almeida*, 463 Phil. 637, 648 (2003).

[10] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[11] *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008.

[12] *Zarraga v. People*, G.R. No. 162064, March 14, 2006,

[13] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

[14] *People v. Jocson*, G.R. No. 169875, December 18, 2007, 540 SCRA 585, 592.

[15] Article III (Bill of Rights), Section 12 (1) of the 1987 Constitution reads: Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have a competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

[16] Article III (Bill of Rights), Section 14 (2) of the 1987 Constitution reads: In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. See also: Rule 115 (Rights of the Accused), Revised Rules of Court.

[17] *People v. Kamad*, G.R. No. 174198, January 19, 2010.

[18] Decision , p. 11, “From the possession of the accused, police officer Villacanas obtained the sachet of shabu and turned them over to P/Insp Clarence Dongail who marked the evidence. Then Dongail turned them over to the BCPO Crime Laboratory for chemical analysis, where PSI Inspector Alexis A. Guinanao, a forensic chemical officer found the white crystalline substance contained in a heat-sealed transparent plastic sachet to be positive for methylamphetamine hydrochloride, a dangerous drug.””

[19] Records, p. 75

[20] *People v. Kamad*, G.R. No. 174198, January 19, 2010.

[21] *People vs Habana*, GR No. 188900, March 5, 2010,

[22] GR No. 175928, August 31, 2007

[23] *People of the Philippines vs. Freddy Salonga y Afiado*, G.R. No. 194948, September 2, 2013. *People of the Philippines vs. Guzman*, G.R. No. 186498, March 26, 2010, 616 SCRA 652.

[24] G.R. No. 186948, March 26, 2010, 616 SCRA 652.

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