

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMMANUEL SISON Y LOPEZ, 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 Emmanuel Sison y Lopez, of the Decision[1] dated July 2, 2012 of the Regional Trial Court, Sixth Judicial Region, Branch 36, Iloilo City, which found accused-appellant guilty beyond reasonable doubt of Violation of Section 5 of Article II of RA No. 9165 or the Dangerous Drugs Act of 2002 in Criminal Case No. 06-62369 while acquitting him of Violation of Section 12, Article 2 of RA 9165 in Criminal Case No. 06-62370.

Version of the Prosecution

Chief Inspector P/Supt Gustilo instructed some police officers of the Iloilo City Police Station to conduct surveillance at Barangay Baldoza, Lapaz, Iloilo City against accused-appellant Emmanuel Sison. The surveillance confirmed that illegal drug activities were made by accused-appellant. A buy-bust team was formed composing of PO3 June Esporas, SPO1 Josefino Barroca, SPO2 Ramos, PO Quiambao, PO3 Hagmay Dignadice, Mario Hortillas, PO2 Decrepito, and Major Garvanzos headed by Chief Inspector P/Supt Gustilo. It was agreed during the briefing that PO3 Esporas would act as poseur-buyer and would be given the marked money of P100.00 while the rest of the team members would serve as reinforcement.

Around 11:30 AM, on March 16, 2006, the team members proceeded to Lapaz Plaza and from there, PO3 Esporas and SPO3 Barroca rode the jeepney to reach the target area at Barangay Baldoza, La Paz. PO3 Esporas disembarked at Barangay Baldoza while SPO1 Barroca proceeded to the target area.

Upon arrival at the target area, PO3 Esporas saw accused-appellant along the alley and told him he intended to buy P 100.00 worth of shabu. Accused-appellant brought PO3 Esporas to his house located at the interior portion. When they arrived at accused-appellant's house, PO3 Esporas gave the buy-bust money to the former and in return, PO3 Esporas received the plastic sachet containing white crystalline substance. PO3 Esporas then introduced himself as a police officer and shortly thereafter, SPO3 Barroca and the rest of the team members arrived.

Chief Inspector P/Supt Gustilo directed one of the police officers to call a Barangay Kagawad and upon the latter's arrival, the team conducted a body search on accused-appellant which yielded the buy bust money with Serial Number LV 357606. Several sachets containing white crystalline substance suspected to be shabu were also seized on top of the table of accused-appellant's house. The seized items were then brought to the Iloilo City Police Office, Intelligence Section since there was already a commotion at the crime scene.

At the police station, PO3 Esporas turned over the seized items to PO1 Arnulfo Parita together with the receipt of the property seized. PO1 Parita took custody of all the confiscated items and placed them individually in a plastic

container with markings “ATP-1” to “ATP-7”, in the presence of SPO3 Barroca, and PO3 June Esporas. Subsequently, PO1 Parita brought the articles before the Prosecutor's Office for inventory and were then presented to Public Prosecutor Nora Espanola who signed said inventory sheet. PO1 Parita likewise brought the seized and marked items to the PNP Regional Crime Laboratory. Forensic Chemist and Assistant Regional Chief of the PNP Crime Laboratory Office VI, P/Supt Angelica Baldevieso conducted a laboratory examination on the six (6) plastic sachets containing white crystalline substance which yielded positive for methylamphetamine hydrochloride as found in Chemistry Report[2] No. D-070-06.

The Charge

In the Informations dated March 21, 2006, accused-appellant was charged with the crime of Violation of Sections 5, and 12, of Article II of RA No. 9165, respectively, as follows:

Crim Case No. 06-62369[3]

“That on or about the 16[th] day of March, 2006, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to PNP poseur-buyer one (1) small elongated heat-sealed transparent sachet containing 0.024 gram of methamphetamine hydrochloride (shabu), a dangerous drug, in consideration of P 100.00, without the authority to sell, distribute and deliver the same; that one (1) P 100-peso marked bill with Serial No. LV-357607 used as buy-bust money was recovered from possession of the herein accused.”

CONTRARY TO LAW”.

Crim Case No. 06-62370[4]

“That at on or about the 16[th] day of March, 2008, in the City of Iloilo, Philippines and within the jurisdiction of this Court, the said accused, with deliberate intent and without justifiable motive, did then and there willfully, unlawfully and feloniously have in his possession and control (5) pieces small opened/used transparent plastic sachet, two (2) of which contain traces of shabu residue, six (6) pieces rolled aluminum foil, five (5) pieces disposable lighter, two (2) pairs of scissors, and one piece cutter, all of which are considered paraphernalias/equipment fit and intended for administering, consuming and introducing into the body dangerous drugs such as marijuana and methamphetamine hydrochloride (shabu) without the authority to possess the same.”

CONTRARY TO LAW.”

On February 1, 2007, accused-appellant was separately arraigned and pleaded “not guilty” to the crimes charged against him.

Joint trial ensued. The prosecution presented the following as witnesses: PO3 June Esporas, SPO3 Josefino Barroca, PO1 Arnulfo Parita, and Forensic Chemist P/Supt. Angelica Baldevieso. On the other hand, accused-appellant testified for his defense.

Version of Accused-appellant

Accused-appellant narrated that around 1:30 PM on March 16, 2006, he was at a store in Barangay Baldoza, Lapaz, Iloilo City drinking softdrinks and smoking. All of a sudden, several police officers arrived at the area and were looking for a particular person but could not find him. He then saw them holding passers-by and subjecting them to body search. When it was accused-appellant's turn, nothing was recovered from his possession but he was still invited for questioning. While walking towards the main road, a police officer told accused-appellant to stay behind as nothing was recovered from him. P/Supt Gustilo, however, ordered that he should go with the police

officers so that he was brought to the police station. Accused-appellant was asked about a certain Melvin but he replied that he did not know anybody by that name. P/Supt Gustilo got irritated and he dragged accused-appellant to another area wherein the latter was struck with a hose. Subsequently, accused-appellant heard P/Supt Gustilo order the policemen to plant evidence against the former. Accused-appellant then saw the plastic sachets, lighter and foils placed on top the table and he was told that a case would be filed against him. Accused-appellant was later brought to Police Station 2.

The RTC Ruling:

Thereafter, on July 2, 2012, the Regional Trial Court, Branch 36, Iloilo City rendered a Decision[5] against accused-appellant, the pertinent portion of which reads:

“Wherefore, judgment is hereby rendered, as follows:

1. Finding accused Emmanuel Sison y Lopez guilty beyond reasonable doubt of violation of Section 5, Article II, Republic Act No. 9165 under Criminal Case No. 06-62369 and sentencing him suffer the penalty of life imprisonment and to pay the fine of Five Hundred Thousand (P500,000.00).
2. Finding accused Emmanuel Sison y Lopez Not Guilty of violation of Section 12, Article II of Republic Act 9165 under Criminal Case No. 06-62370 for failure of the prosecution to prove his guilt beyond reasonable doubt.

The shabu (Exhibit “J-1”) subject of Criminal Case No. 06-62369, the other items (Exhibits “M” to “M-6”, “N-1” to “N-5”, “O” to “O-1” and “P”) subject of Criminal Case No. 06-6262370 which may be used for illegal purpose are confiscated in favor of the government and the OIC Branch Clerk of Court is directed to immediately turn over said item to the Philippine Drug Enforcement Agency, Region 6 for proper to existing rules and regulations.

On the other hand, the One Hundred Peso bill (Exhibit “L-1”) is ordered to be returned to the Intelligence Section, Iloilo City Police Office.

SO ORDERED.”

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

I.

“THE HONORABLE REGIONAL TRIAL COUT ERRED IN FINDING THAT THE IDENTITY AND INTEGRITY OF THE SEIZED ITEMS HAVE NOT BEEN COMPROMISED;

II.

THE HONORABLE REGIONAL TRIAL COURT ERRED IN GIVING GREATER CREDENCE TO THE TESTIMONIES OF THE POLICE OFFICERS/ARRESTING OFFICERS; and

III.

THE HONORABLE REGIONAL TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT.”

THIS COURT'S RULING:

There is merit in the appeal.

In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a sine qua non for conviction. The narcotic substance itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is therefore of prime importance that the identity of the

dangerous drug be likewise established beyond reasonable doubt. Hence, every fact necessary to constitute the offense must be established. The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed. Of chief concern in drug cases then is the requirement that the prosecution prove that what was seized by police officers is the same item presented in court. This identification, as the High Court has held in the past, must be established with moral certainty and is a function of the rule on chain of custody. The chain of custody requirement is therefore essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[6]

In *People vs. Mapa*, GR No. 91014, March 31, 1993, the accused-appellant was granted an acquittal after the prosecution failed to clarify whether the specimen submitted to the NBI for laboratory examination was the same one allegedly taken from the accused. In *People vs. Dismuke*, GR No. 108453, July 11, 1994, the Supreme Court ruled that the failure to prove that the specimen of marijuana examined by the forensic chemist was that seized from the accused was fatal to the prosecution's case. Too, in *People vs. Partoza*, GR No. 182418, May 8, 2009, 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:

xxx xxx xxx

“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. “

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. [7] It must be stressed 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.[8] Central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from accused-appellant. Hence, this Court adopts 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.[9]

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. 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.[10] Thus, the corpus delicti should be identified with unwavering exactitude. [11] 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.[12]

Accused-appellant in the instant case was allegedly caught selling shabu in a buy bust operation conducted by police operatives. 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.[13] 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[14] and of the accused facing a criminal charge[15] are safeguarded.

However, a careful perusal of the instant case shows that there are several inconsistencies in the testimonies of the key prosecution witnesses regarding the buy-bust operation. The records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure mandated by law.

Accused-appellant points out that PO3 Esporas was the only one who transacted with him and as such, he was the only police officer who witnessed the alleged buy-bust operation. Accused-appellant adds that SPO3 Barroca only arrived after PO3 Esporas introduced himself as a police officer and therefore, he did not witness the consummation of the sale of illegal drugs. After accused-appellant's arrest, a search was conducted by PO3 Esporas and he placed the item he recovered from his person as well as those items found on the table inside the house, and subsequently mingled all articles on top of the same table. Accused-appellant claims that it was PO1 Parita who arranged the confiscated articles and thus, the seizing officer, without marking the same, mixed and co-mingled all the items on the table together with the other seized items. This particular act of the police operatives is highly irregular.

Accused-appellant submits that PO1 Parita had no participation in the transaction between PO3 Esporas and himself and hence had no knowledge as to the identity of the item allegedly received by PO3 Esporas from accused-appellant. And yet, PO1 Parita was the one who made the markings on all the items recovered. Accused-appellant contends that PO1 Parita was nowhere near the place where the buy-bust operation took place nor did he have knowledge of the items taken – where and when they were seized. When the items were turned over to him, there were as yet no markings thereon. Accused-appellant concludes that PO1 Parita merely guessed that all those seized articles were from the former.

We note that PO3 Esporas' testimony contradicts that of PO1 Parita's statement. PO3 Esporas testified that PO1 Parita took custody of the seized items after the former's arrest whereas PO 1 Parita stated that he was at their office at the time of the buy-bust operation and not at accused-appellant's house and that it was in their office at the Intelligence Section that the said items were turned over to him and not prior thereto. Therefore, the custody of the items seized during the buy-bust operation is clear and uncertain.

This Court finds that the prosecution failed to clearly establish the chain of custody of the seized plastic sachet containing shabu subject of the alleged sale. PO3 Esporas and SPO3 Barroca, the key prosecution witnesses did not 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 changed hands.

Too, we take note that all the items confiscated from accused-appellant including the sachet confiscated from his person were co-mingled and mixed on the table inside accused-appellant's house without being marked first. In

effect, there is now doubt as to which item was seized from the accused-appellant or which sachets were found on the table of his house. There is no way of distinguishing it from the rest of the items prior to it being mixed with all the items allegedly recovered.

Also, another contradicting testimony pertains to PO3 Esporas' statement wherein he alleged that he took custody of the seized items after they were marked by PO1 Parita and that PO1 Parita merely prepared the seizure receipt and document for the inventory. PO1 Parita, on the other hand, attested that he immediately took custody of the said items after he had them marked.

Another contradiction of testimonies pertains to the inventory which was a mere listing of the alleged items recovered from accused-appellant which the police officers prepared and signed themselves with no witnesses or representative required by law. Accused-appellant claims that he was not present at the time of inventory-taking and that it was only on March 17, 2006 that a proper inventory was made before Prosecutor Nora Espanola. According to accused-appellant, PO3 Esporas appears to have contradicted himself when he testified that he took custody of the seized items because it was PO1 Parita who brought the same for inventory before Prosecutor Espanola. To summarize, accused-appellant asseverates that (1) the arresting officers failed to conduct an inventory of the seized items immediately after the operation and they failed to explain the delay of said inventory and (2) no photographs were taken of the seized articles during the inventory in violation of Section 21 of RA 9165. He avers that the failure to comply with this mandatory requirement renders the evidence inadmissible.

Accused-appellant insists that the repeated inconsistencies in the testimonies of PO3 Esporas with those of his fellow police officers cast great doubt on the integrity and evidentiary value of the illegal drugs seized. In effect, he asseverates that the presumption of regularity in the performance of duties of the police officers cannot apply in the instant case. PO3 Esporas testified that it was SPO3 Barroca and himself who conducted surveillance on accused-appellant while SPO3 Barroca declared that it was only PO3 Esporas who had knowledge over the buy-bust operation conducted against him.

We agree with accused-appellant. Time and time again, the High Court has ruled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime. As long as the testimonies of the witnesses corroborate each other on material points, the minor inconsistencies therein cannot destroy their credibility[16]. The inconsistencies and/or flaws pointed out by accused-appellant in the instant case are too glaring to ignore. The inconsistencies in the testimonies of the prosecution witnesses pertain to the chain of custody which is fatal to the prosecution's case and did not merely refer to peripheral matters.

The required procedure on the seizure and custody of drugs is embodied 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]

Vital links in the chain of custody

The first link in the chain of custody starts with the seizure of the plastic sachet by PO3 Esporas from accused-appellant. In his testimony, PO3 Esporas testified that all the items seized were brought to the police station since there was already a commotion at the area. It was only in their office that the said items were marked by PO1 Parita with "ATP" and it was only the next day where the same items were brought to the Iloilo City Prosecution Office where these were photographed and inventoried before Prosecutor Nora Espanola in the presence of the accused-appellant, arresting officers, media representative and barangay official. 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 present case, nothing in the records gives us a clear insight on the manner and circumstances which attended the marking of the confiscated sachet by PO1 Parita nor was the other marking done before the Prosecutor sufficiently explained. The first defective marking done by PO1 Parita at the police station was not corrected by the second marking done at the Prosecutor's Office.

On top of such error, the police operatives co-mingled the sachet found on accused-appellant's person with those found on top of the table together with some drug paraphernalia. PO3 Esporas attested that:

“Q: In what portion of the body of Manuel Sison that you recovered the buy-bust money?

A: I recovered the money from the right pocket of his short pants.

Q: What else happened there?

A: After the recovery of the buy bust money, I placed it on top of the table where there drug paraphernalia used by Doronilla and I compared the buy bust money with the machine copy whether the serial number matched with it.

Q: You mentioned that there was also a table there where Doronilla was using drugs. How far was this table from the place where you arrested Sison?

A: The distance is about one meter because Sison was at the door.

Q: And you mentioned that there were paraphernalia on the table, what were these paraphernalia that you noticed on the table if you can recall?

A: The paraphernalia that were already on the table are aluminum foils, 20 plastic sachets, scissors, disposable lighters and cutter.

Q: After noticing these paraphernalia, what was done with these paraphernalia there?

A: We gathered all the drug paraphernalia and after I recovered the buy bust money, I also placed it on the table together with the items which I purchased from Sison and that was the time Parita arranged them.

Q: After that, who took custody of the items

A: PO1 Paria was the one who took custody of all the items which we brought to the office for marking.

Q: What office are you referring to?

A: Iloilo City Police office, Intelligence Section.

Q: Why? Was the marking not made in the house when it was gathered?

A: Considering at that time, there was already a commotion taking place in the area, so we gathered all the evidence and brought it to the office because we were avoiding trouble.”[18]

The second link in the chain of custody is its turnover of the seized shabu from PO3 Esporas to PO1 Parita, the evidence custodian at the police station. It should be pointed out that in handing over to PO1 Parita the confiscated sachet, there was no acknowledgment receipt thereof. PO1 Parita testified thus:

Witness

“A: Police Officer Esporas turned over to me one piece small elongated heat sealed transparent plastic sachet containing white crystalline substance believed to be shabu as buy bust item, one piece One Hundred Peso bill used as buy bust money bearing serial number LV 357607, five (5) pieces small used, open transparent plastic sachets containing white crystalline substance believed to be shabu residue, six pieces rolled aluminum rolls, five (5) pieces disposable lighters, two pieces pair of scissors and one piece cutter.

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Q: Where was the turn over made by Police Officer Esporas?

A: At our office.

Q: What time was that?

A: At 12:00 o' clock.” [19]

What is clear is that PO1 Parita marked the enumerated items in the police station but not in the presence of accused-appellant. Also, we have observed that the Receipt of the Property Seized was prepared by him but was signed by other police officers - PO3 Esporas and SPO3 Barroca.

There was no clear narration either as to what time SPO3 Barroca arrived at the scene of the buy-bust operation. It appears that he came into the picture only after the arrest of accused-appellant. PO3 Esporas attested thus:

“Q:And after the transaction that you mentioned, what happened next?

A: After our transaction, when I handed to him the money and he gave me the plastic sachet of shabu, that was the time that I introduced myself as police officer.

Q: After introducing yourself as police officer, what happened next?

A: After I introduced myself as police officer, that was the time Barroca arrived and I instructed Sison to sit at his side.

Q: Why? At that time when you were making a transaction with Manuel Sison, do you know where Barroca was situated at that time?

A: At that time, when we entered the alley, Manuel Sison was ahead of me. Based on instruction, Barroca will just follow, that is why when we were already at the house of Manuel Sison and after I introduced myself a police officer and he panicked, that was the time Barroca approached.”[20]

The records thus do not show either that SPO3 Barroca saw the actual consummation of the sale of illegal drugs. The records are also barren of evidence whether he or PO3 Esporas saw the markings made by PO1 Parita in the presence of accused-appellant. No one witnessed PO3 Esporas confiscate the alleged drug from accused-appellant. There was no clear account of who took the seized items to the police station. Thus, the person who had control and possession of the seized drug at the time of its transportation to the police station was not certain. In the absence of clear evidence, we cannot presume that PO3 Esporas handled the seized sachet — to the exclusion of others — during its transfer from the place of arrest and confiscation to the police station.

The prosecution likewise failed to present proof pertaining to the temporary custody of the seized articles when it was at the police station. This is particularly significant since the seized specimen was turned over to the PNP Crime Laboratory the following day and not immediately after its seizure on the same day.

As earlier mentioned, while PO1 Parita admitted that he prepared the inventory of the seized drugs, he himself did not sign the same to attest as to the truth of its confiscation. In short, PO1 Parita prepared the inventory but other police operatives signed the Certificate of Inventory. Such an irregularity in procedure was not explained by PO1 Parita. He failed to justify why he who prepared the same did not sign the inventory.

It is to be noted also that there were no photographs of the suspected shabu that were taken at the time of arrest—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. The “formal” physical inventory and taking of photographs were done only the next day. Any kind of plausible explanation was not offered for this omission by the police operatives. PO1 Parita attested thus:

“Q: Why? What did you with the items after you listed them?

A: I kept them, sir.

Q: When did you bring the items to the Fiscal's office for inventory?

A: The next day, sir.

Q: Before whom did you appear at the Fiscal's Office?

A: Before Prosecutor Nora Causing Espanola, sir.

Q: During the inventory at the Fiscal's Office, what was done there with the items?

A: The items were shown to fiscal Espanola.

Q: After showing the items to Fiscal Espanola, what happened next?

A: The witnesses signed the document, the inventory of the confiscated/seized articles.

Q: Who prepared that document?

A: I was the one, sir.”[21]

Another glaring error of the police operatives pertains to the transfer of the seized drugs to the Crime Laboratory for examination. Although it was PO1 Parita who had temporary custody of the confiscated items kept at the police station, he did not describe the manner in which these items were kept, whether there was a possibility that another person had access thereto casting serious doubt as to the identity of the corpus delicti of the offense. We cannot discount even the smallest possibility that other persons besides PO1 Parita had access to the place where he kept the same and tampered with the evidence inside during this intermittent period pending its delivery to the crime laboratory.

The records reveal that PO1 Parita brought the confiscated shabu to the PNP Crime Laboratory the following day. The request for laboratory examination was signed by P/Supt Julio Gustilo. 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/Supt Angela Baldevieso 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 bearing 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/Supt Baldevieso pending presentation in court is absent which creates a missing link in the chain of custody.

In sum, 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 absent from the evidence adduced during the trial.

Lopez v. People G.R. No. 172953, April 30, 2008 is particularly instructive 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." 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.[22]

Verily, in *People v. Pringas*,^[23] the Supreme Court opined 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 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 the proper signing of the receipt of inventory by the one who prepared the same had not been made in the place of seizure and arrest as required by the Implementing Rules in case of warrantless arrests. There was no explanation why the Certificate of inventory prepared by PO1 Parita was signed by other persons who did not prepare the same. 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 sufficiently explained by them.

Presumption of Regularity in the performance
of official duties

The records show that the trial court heavily relied on the testimonies of PO3 Esporas and PO1 Parita and therefore banked on the presumption of regularity in the performance of official duty a police officer enjoys in the absence of any taint of irregularity and of ill motive that would induce him to falsify his testimony. True, the defense did not adduce any evidence showing that the police officers had any motive to falsify. The regularity of the performance of their duties, however, leaves much to be desired given the lapses in their handling of the allegedly confiscated drugs as shown. An effect of this lapse, as the High Court held in *Lopez v. People*, G.R. No. 172953, April 30, 2008 is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no ifs and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence. *People v. Santos*, G.R. No. 175593, October 17, 2007, instructively tells us that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. Consequently then, the overwhelming misdemeanors of the police officers in the conduct of the buy-bust operation and the missing links in the corpus delicti of the offense warrant the acquittal of accused-appellant.

All told, 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*,^[24] the Supreme Court, citing *People vs. Guzman*,^[25] 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 July 2, 2012 of the Regional Trial Court, Sixth Judicial Region, Branch 36, Iloilo City, in Criminal Case No. 06-62369 is REVERSED and SET ASIDE. Accused-appellant Emmanuel Sison y Lopez, is ACQUITTED on reasonable doubt. Let a copy of this Decision be furnished the Director of Prisons, New Bilibid Prisons, 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. 40

[2] Records, p. 10

[3] Records, p. 1

[4] Records, p. 76

[5] Rollo, p. 28

[6] *People v. Garcia*, G.R. No. 173480, February 25, 2009

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

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

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

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

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

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

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

[14] 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.

[15] 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.

[16] *People v. Emilio Rabutin*, G.R. Nos. 118131-32, May 5, 1997

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

[18] TSN, January 27, 2007, pp. 12-14

[19] TSN, May 17, 2007, page 5.

[20] TSN, January 17, 2007, pp. 10-11

[21] TSN, May 17, 2007, page 9

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

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

[24] *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.

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

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