

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LESLIE BAHINA, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

On appeal is the Judgment[1] dated 12 November 2012 of the Regional Trial Court, 7[th] Judicial Region, Branch 57, Cebu City finding Leslie Bahina guilty beyond reasonable doubt for violation of Section 5, Article II of RA 9165 in Crim. Case No. CBU-86515.

THE CHARGE

On 13 July 2009, an Information[2] was filed by the the Office of the City Prosecutor, Cebu City against Leslie O. Bahina for Violation of Section 5, Article II of RA 9165, the accusatory portion whereof reads:

“That on the 10[th] day of June 2009 at about 5:15 P.M. in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) medium plastic pack of white crystalline substance weighing 0.49 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.”

THE FACTS

Upon arraignment,[3] Leslie Bahina with assistance of counsel pleaded not guilty to the charge filed against him.

Trial on the merits ensued.

By its Order[4] dated 3 November 2009, the RTC dispensed with the testimony of the forensic chemist, Police Inspector Rendielyn L. Sahagun.

Thereafter, the prosecution presented the following witnesses on the stand, namely: PO1 Frederick Ybañez, PO3 Roy Carlo Veloso and PO2 Albert Luardo. The defense, on the other hand, presented Leslie O. Bahina, the accused, himself.

On 3 November 2009, the prosecution and the defense stipulated on the subject matter of the testimony of the forensic analyst, P/Insp. Rendielyn Sahagun, to the effect that the latter is an expert in the examination of dangerous drugs. The parties further stipulated that the letter requesting for the laboratory examination of the subject specimen consisting of one medium plastic pack of white crystalline substance believed to be shabu marked with “LOB-BB” was delivered by PO1 Ybañez and received by PO1 Jerry M. Antipona, who, in turn gave the same to P/Insp. Rendielyn Sahagun. Next, the parties stipulated that after receipt of the specimen, P/Insp. Ybañez conducted an examination thereof and the result of which were stated down in Chemistry Report No.

D-557-2009[5] marked as Exh. “C” dated 11 June 2009, which report indicated her findings that the submitted specimen was found positive for Methamphetamine Hydrochloride, a dangerous drug.

The version of the prosecution

The testimonies of the prosecution's witnesses, namely: PO1 Frederick Ybañez, PO3 Roy Carlo Veloso and PO2 Albert Luardo, all members of the buy-bust team, may be summed-up as follows:

After receiving and verifying the information received from their informant that a certain Leslie Bahina was engaged in illegal drugs trade, PO1 Ybañez, PO3 Veloso, PO2 Luardo and PO3 Pandong planned to conduct a buy-bust operation against Leslie Bahina. PO1 Ybañez was designated as poseur-buyer and PO3 Veloso, the driver, while the rest were assigned to secure the perimeter. That, the informant is a close friend of Leslie Bahina and is not a member of the arresting team. During the briefing it was agreed that PO1 Ybañez would buy P5,000.00 worth of shabu using the buy-bust money consisting of two (2)- P100 peso bills[6] with serial Nos. WR 778477 and LE 896218 and marked with the initials “CSP” at the lower portion. Placed between these two marked P100 bills is a wad of papers. They prepared a pre-operation report[7] and properly coordinated[8] with the office of the Philippine Drug Enforcement Agency (PDEA). Their asset or informant talked with Leslie Bahina to discuss about the supposed interest to buy shabu. After the conversation between the informant and Leslie Bahina, the informant gave the phone to PO1 Ybañez. PO1 Ybañez told Leslie Bahina that he will be purchasing P5000.00 worth of shabu. That, Leslie Bahina suggested where they should meet up.

After the briefing, PO1 Ybañez and PO3 Veloso together with the informant went to the meeting place on board an unmarked vehicle, which is owned by PO2 Luardo. The other members, PO2 Luardo and PO3 Pandong rode a separate vehicle parked at the opposite side. At the agreed time, that is, around 5PM, Leslie Bahina did not arrive yet so the team waited. Fifteen (15) minutes later, Leslie Bahina arrived.

The informant alighted from the unmarked vehicle and approached Leslie Bahina. As these two were just at a hearing distance from the unmarked vehicle, the police officers inside heard the informant tell Leslie Bahina that the buyer was inside waiting. As soon as he heard this, PO1 Ybañez lowered the rear car window and gestured to Leslie Bahina to get inside, which the latter did. While inside, PO1 Ybañez asked Leslie Bahina if he brought the shabu. In reply, Leslie Bahina asked about the payment. PO1 Ybañez asked Leslie Bahina to first show the shabu. Leslie Bahina dipped his hand into his pants and took out a medium-pack containing white crystalline substance. After receiving this packet, PO1 Ybañez gave the payment and before Leslie Bahina could count the money, PO1 Ybañez immediately executed the pre-arranged signal, which is “to touch his head”. PO3 Veloso was at the driver's seat and was observing the going-ons. The informant stayed outside the vehicle.

That, while they were still inside the car, PO1 Ybañez marked the packet of white crystalline substance with his initials “LOB-BB”. From receipt of the said packet until submission to the PNP Crime Laboratory, PO1 Ybañez had custody thereof.

PO3 Pandong read Leslie Bahina his constitutional rights.

PO2 Luardo took pictures of the following, to wit: the parking space;[9] the car parked on the street with its windows closed;[10] the store[11] nearby; of PO1 Ybañez and Leslie Bahina sitting side by side inside the car,[12] of PO1 Ybañez executing the pre-arranged signal;[13] and packet[14] containing the white substance placed beside the left thigh of Leslie Bahina;[15] and he, too, was the one who recovered the buy-bust money. No photograph was taken of the buy-bust money.

PO1 Ybañez prepared the inventory[16] while still inside the car. The inventory was signed by PO1 Ybañez and PO3 Pandong.

They brought Leslie Bahina to the police station. PO2 Luardo caused to record the arrest of Leslie Bahina in the police blotter[17] wherein three different sets of time are indicated, to wit: 2:45PM is the time the arresting team left the office; 5:30PM, the time the arresting team arrived in the office after the operation; and 5:35PM, the time of arrest of Leslie Bahina.

PO1 Ybañez prepared the letter-request[18] for the examination of the subject specimen. The said letter and the subject specimen were turned over to the PNP Crime Laboratory, and which were received by Officer Antipona. After submitting these items, PO1 Ybañez went back to their office for the proper documentation and preparation of their affidavit[19] and to detain Leslie Bahina.

That, the pack of shabu presented in court is the same pack sold to PO1 Ybañez and marked by him with “LOB-BB” and photographed by PO2 Luardo.

There was no representative from the media and the Department of Justice, and any elective official during the preparation of the inventory. Thus, other than the police officers, no other person signed the inventory. This is because the buy-bust operation was conducted after 5PM – the fiscal's office was already closed at that time, no media was around, and no elected barangay official was available at that time, too. The DOJ was contacted but they did not make the request for their presence; at the barangay hall, there was only one person there; and as for the media, some of them are not cooperative and would only be present if the operation involves a large amount of illegal drugs.

The version of the defense

On the day of the supposed buy-bust operation, he just came from a drugstore to inquire about the price of the vitamin (Livolin) that he is taking so that he can compare this price with the price of the same vitamin being sold in the other drugstores. He disembarked at the corner where the supposed meeting-sale would take place. As he was walking, a person, who was unknown to him, waylaid him and then held him by his left arm. This person called him “Les” and told him to go with him. They crossed the street where a white car was parked. Inside the car are two (2) persons who he cannot identify. He was able to notice these two (2) persons, both of whom are seated in the front, because he and the person who approached him passed at the back of the parked car. He also noticed another person standing at the right side of the back of the car. As the rear door of the car was opened, he peeped inside the car. The person who was standing, held him by his neck and then pushed him into the car. He sat in the car; and the person who pushed him sat beside him.

He learned later that it was PO1 Ybañez who pushed him inside the car; and the person who approached him was PO3 Pandong. That, the driver of the marked vehicle was PO3 Veloso and seated beside him was PO2 Luardo.

That, after he was frisked, PO3 Pandong asked him where he hid the shabu. As to his cellphone, PO1 Ybañez confiscated it from him, and until now, has not yet returned it to him. They left the place where the white car was parked and then proceeded to Jones Avenue, made a turn passing by Cebu Normal University. The police officers drove around passing along Jones Avenue, RR Landon Street. PO1 Ybañez asked him if he was bringing something with him, when he replied that he was not bringing anything, PO1 Ybañez told him that “if you don't have, then we have”.

Then they went to Kamuning Street where they stayed for about an hour. Five minutes before 1PM, PO3 Veloso said that he was already hungry. They went to Jollibee where he bought lunch for himself and PO3 Veloso at the drive-thru. While the other police officers took theirs somewhere else. From Jollibee, they went to somewhere in the vicinity of Baseline Restaurant where there are trees and is quiet, and it was there that they ate their lunch. After taking their lunch, they went back to Kamuning Street, then proceeded to the NBI compound where they

stopped again. While there, he saw PO3 Pandong going out a building with glass doors, which he believes is a pension house. PO3 Pandong was bringing a camera with zoom [lens]. PO3 Pandong then got in the car, sat beside the driver. Then, they left the place and proceeded back to RR Landon and stopped by the PDEA office, that was around 3PM. PO3 Pandong went inside the PDEA office bringing with him the camera. PO3 Pandong returned to the car. From the PDEA office they went back to Harrison Place. There, PO3 Veloso and PO3 Pandong disembarked from the car. PO3 Pandong positioned himself six (6) meters across from the car where he was seated and took pictures of him from there. During the time his pictures were being taken, PO1 Ybañez instructed him to which direction he should turn his head. PO1 Ybañez took pictures of him, too, with the former's mobile phone. After his pictures were taken, PO1 Ybañez told him that he is going to jail.

From Harrison Park, they went to Banilad, and stopped at a building where PO3 Veloso alighted from the car, and then came back. From Banilad, they went to the police station situated in Gorordo Avenue. When they arrived in the police station, he was placed inside a room where he was left alone. From where he was, he could hear laughter. He peeped through the door and saw police officers laughing and PO1 Ybañez scrutinizing a transparent pack. He was put inside the detention cell at past 5PM.

He cannot differentiate between shabu and alum. He only heard about the drug in the news reports. He does not know that illegal drugs are rampant in their vicinity because he is a home buddy and just loves to stay at home playing his guitar.

THE RULING OF THE REGIONAL TRIAL COURT

The RTC disposed the case in this wise, viz -

“WHEREFORE, premises considered, the Court finds accused Leslie Bahina guilty beyond reasonable doubt for Violation of Section 5, Article II of RA 9165 and is sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The pack of shabu is forfeited in favor of the government.

SO ORDERED.”[20]

In convicting Leslie Bahina, the RTC ratiocinated that:

“On the charge of sale of illegal drugs, the elements of identity of the seller and the buyer, the object and its consideration, delivery of the object and the payment plus the presentation of the corpus delicti in court. (People vs. Gaspar, G.R. No. 192816, July 6, 2011).

To substantiate the charge, the poseur-buyer officer Ybañez had testified in details the negotiations between officer Ybañez and the accused immediately prior to the sale of illegal drugs. On the actual transaction, officer Ybañez was able to buy one pack of shabu from the accused, who received the payment consisting of P200.00 for the shabu, he sold and delivered to officer Ybañez.

This Court finds the version of facts of the prosecution more credible to sustain than the version of facts of the accused denying any knowledge of the illegal sale.

‘The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy bust transaction between the entrapping officers and the accused. The presentation in court of the corpus delicti, the body or substance of the crime established the fact that a crime has actually been committed.’ (Ampatuan v. People, G.R. No. 183676, June 22, 2011, 652 SCRA 615)

Accused's evidence admitted that he was with the arresting officers at Harrison Park, officer Ybañez examined the subject evidence and photos were taken while he was inside the car. Still, accused denied having sold or in

possession of shabu, an item which he only heard. Thus, accused claimed that it is a planted evidence.

'The allegation of frame-up and extortion by police officers is a common and standard defense in most dangerous drug cases but it is viewed by the Supreme Court with disfavor, for it can be easily concocted.'

However, no evidence was adduced why the officers was impelled with ill-motive to concoct such a grievous offense.

'When police officers have no motive for testifying falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their functions.' (People vs. Padua, G.R. No. 174097, July 21, 2010).

For one to falsely charge the accused, the latter and the officers must have known each other.

'Records also show that appellant and the police officers are strangers to each other. Nothing in the records explains why the prosecution witnesses would fabricate their testimonies and implicate appellant in such a serious crime. (People vs. Chu, G.R. No. 143793, February 17, 2004)

The chain of custody of the shabu established the identity of the shabu, Officer Ybañez received the shabu sold by the accused to him in exchange of the buy-bust money the officer gave to the accused as payment. Said officer brought the shabu from the scene to the police office, after the markings on the shabu were done at the scene. From the office to the PNP Crime Laboratory, officer Ybañez delivered the shabu to officer Antopina, the duty officer of said laboratory, as evidenced by their signatures appearing on the letter request. The latter in turn handed the illegal drug for examination to P/Sr. Insp. Sahagun, who finally presented it in court. Further, presumption lies on the identity of the shabu.

'In any case, unless Mendoza can show that there was bad faith, ill will or tampering with the evidence, the presumption that the integrity of the evidence has been preserved will be upheld.' (People vs. Mendoza, G.R. No. 189327, Feb. 29, 2012)

All the foregoing findings point to the prosecution's successfully able to obtain the degree of proof to sustain a conviction.

'Proof beyond reasonable doubt does not mean absolute certainty as to exclude the possible [sic] of error.' (People vs. Esquila, G.R. No. 116727, February 27, 1996)

'The law requires only moral certainty or that degree of proof, which produces conviction in an unprejudiced mind.' (People vs. Bacalzo, 195 SCRA 557)."[21]

Hence, this appeal wherein Leslie O. Bahina now appellant makes the following assignment of errors, to wit:

"I.

That the lower court failed to meticulously screen the credibility of the testimony of PO1 Frederick Ybañez;

II.

That the court failed to appreciate that there is impossibility to view a transaction from the front mirror of the driver's seat considering that seats of the car usually cover the body of the passengers at the back, hence transaction cannot be possibly viewed, contrary to the testimony of PO2 Veloso.

III.

The items recovered from the buy-bust operation marked as Exhibit "L" sourced out from the buy-bust operation was not signed by the accused nor any of his representatives.

IV.

There was no surveillance report if indeed a buy-bust operation is to be conducted.

V.

That the time the specimen was submitted for laboratory examination marked as Exhibit “A” by the prosecution was too near the time when the buy-bust operation was conducted hence, too incredible to believe.

VI.

That the testimony of the accused was never rebutted, hence, the conviction was a violation of the constitutional mandate of presumption of innocence.”

The appellant filed an “Urgent Motion to Retain Accused at Calunasan”[22] for health reasons as he was suffering from “hepatitis B and liver ailment”. By Resolution[23] dated 17 April 2013, we denied this urgent motion.

THE PARTIES' ARGUMENTS

The appellant's

Appellant raised the defense of denial and claimed that he was merely framed by the arresting police officers after they failed to extort money from him.

The appellant argues that the RTC erred in evaluating the testimonial evidence when it placed undue reliance on the presumption of regularity and the absence of improper motive on the part of the police officers to perpetuate the claimed irregularities. The appellant asseverates that the presumption of regularity cannot take precedence over the presumption of innocence in his favor. That, the prosecution witnesses, particularly the members of the arresting team, concocted stories and fabricated evidence in order to nail him. What is more, nobody read him his rights under the Miranda doctrine.

Finally, the appellant insists that the identity of the subject shabu was not sufficiently proven since the seized item was not photographed and inventoried in his presence or his representative. The inventory was not even signed by him or was he furnished a copy thereof.

The appellee's

Contrary to the appellant's insistence, the prosecution was able to prove beyond reasonable doubt that the item seized from the appellant is the same specimen presented in court. The arresting police officers were able to preserve the integrity and evidentiary value of the seized item, thus, it is not amiss to state that they met the requirements mandated in the chain-of-custody rule. To add, non-compliance with Article 21 of RA 9165 will not make the seized illegal drug inadmissible in evidence.

The appellant's argument that it was impossible for the back-up team to see the designated poseur-buyer's execution of the pre-arranged signal from their position deserves scant consideration as the same is too trivial in nature and would not affect the instant case on material points. So, too, is the appellant's argument that the submission of the supposed seized illegal drug to the laboratory is too near the time when the buy-bust operation was conducted.

More importantly, the prosecution sufficiently established that the sale between the appellant and the designated poseur-buyer actually took place coupled with the presentation in court the corpus delicti. In conclusion, the prosecution succeeded in proving the guilt of the appellant beyond reasonable doubt.

Finally, the defense of denial interposed by the appellant is not substantiated by clear and convincing evidence. Just like the defense of alibi, the defense of denial or frame-up has been invariably viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.

Reply of the appellee's

That, the prosecution never offered rebuttal evidence to refute his defense of frame-up. This omission creates doubt whether a buy-bust operation indeed was conducted.

That, a decision acquitting him be promptly and expeditiously rendered.

THE ISSUE

Whether non-compliance by the apprehending police officers with Section 21 of RA 9165 warrants the acquittal of the appellant.

OUR RULING

Onset, in *People v. Adam*,^[24]

This Court has held that the elements necessary for the prosecution of illegal sale of drugs are (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in Court of the corpus delicti as evidence. In *Roble vs. Arbasa*,^[25] this Court held that the essential elements of a sale are the following: (a) consent or meeting of the minds, that is consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent.

In this instance, the prosecution presented witnesses to establish that a buy-bust operation was conducted on the appellant. That, the sale happened at 5:15PM of June 10, 2009. That, the subject specimen was purchased by the designated poseur-buyer, PO1 Ybañez, from the appellant. That, PO1 Ybañez immediately marked the subject specimen with the initials "LOB-BB" while they were still inside the car. That, PO2 Luardo took photographs of the following: (1) of PO1 Ybañez executing the pre-arranged signal; (2) of PO1 Ybañez and the appellant sitting inside the unmarked vehicle; (3) of the subject specimen which was placed next to a half of a pair of checkered shorts worn by the appellant; (4) of the surrounding area where the buy-bust operation was conducted and (5) of the unmarked vehicle with its windows still closed. That, PO1 Ybañez had initial custody of the subject specimen until he turned it over to the Regional Crime Laboratory Office-7. That, back at their station, PO1 Ybañez prepared an inventory, which the appellant refused to sign. That, PO1 Ybañez drafted the letter-request for laboratory examination of the subject specimen. That, PO1 Ybañez delivered the letter-request and the subject specimen to the crime laboratory. That, PO1 Gerry M. Antipona received both the letter-request and the subject specimen. That, Forensic Chemist Rendielyn L. Sahagun examined the subject specimen, which tested positive for Methamphetamine Hydrochloride or "shabu". That, the illegal drug presented in court is the same one purchased from the appellant by the poseur-buyer, PO1 Ybañez.

At this juncture, the prosecution has presented evidence pointing to the appellant's sale of the illegal drug; the chain of custody of the subject illegal drug and its marking, taking of its photograph and inventory thereof. But this, however, does not end here. "Considering the dangerous illegal drug's peculiar characteristic rendering the same indistinct, readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise, there is a need to comply strictly with procedure in its seizure and custody."^[26] This procedure is laid down in Section 21, paragraph 1, Article II of R.A. No. 9165, viz -

"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 provision of law is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, viz.:

(a)

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: 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 seizure of and custody over the said items.

In this instant case, PO2 Luardo testified that there was no representative from the media and Department of Justice, and elective public official during the inventory of the subject specimen and taking of its photograph. Thus, he testified on cross, viz -

“Q:

Was there a representative from the media?

A:

None, sir.

Q:

Was there a representative from the Department of Justice?

A:

None also.

Q:

How about any elected official from the barangay, from the city, were you able to contact?

A:

No, sir.

Q:

So you are saying that the copy of the inventory, not anyone from the media or not anyone from the DOJ or any elected official of the barangay or city was furnished a copy of the inventory receipt after the operation?

A:

No, sir.”[27]

To justify the absence of the witnesses to the inventory and taking of photograph of the subject drug, PO2 Luardo testified on re-direct, to wit:

“Q:

Why is that there were no witnesses during the inventory?

A:

Because it was already 5:00 in the afternoon. The fiscal's office is already closed then there were no media because the media were present during preparation in our office and then barangay tanod or any barangay elected officials were not there because there were no available barangay officials at that time.

Court:

That is the problem having barangay officials who are also working, that is they are also employed. They will not be on a twenty-four duty.

Q:

You mentioned about preparation, what preparation are you referring to, in the office?

A:

Yes, when we went back to our office, our head of office called some representatives from the media to present the accused as well as the evidences that were seized to them.

Q:

But they were not asked to sign any more the inventory despite the fact that the evidences in the inventory were presented?

A:

Yes, ma'am.”[28]

On re-cross, PO Luardo offered an explanation re: absence of the representative from the media and the DOJ and any elected public official, viz -

“Q:

You said that the reason why there was no representative from the DOJ because it was already beyond office hours, is that correct?

A:

Yes, sir.

Q:

And the media will only come after the operation in your office?

A:

Yes, sir.

Q:

For their compliance report?

A:

Yes, sir.

Q:

With the public official?

A:

There were no available.

Q:

During your briefing, did you consider all these, you consider to call a media representative during the briefing, you did not call the DOJ that you have conducted a buy-bust operation and as one of the requirements they to be present in accordance with Section 21 of RA 9165?

A:

We did discuss it but as what I have said earlier, the time and the place of operation would be flexible. Since the operation would depend on the appearance of the accused because it would be possible that the accused . . .

Q:

Anyway, my question is, you have contacted the DOJ?

A:

We have contacted.

Q:

Requesting their presence?

A:

We did not.

Q:

How about the barangay officials, did you contact barangay officials?

A:

We did go to the barangay hall but there was only one person there present.

Q:

You went to the barangay hall?

A:

Yes, sir.

Q:

When was that?

A:

After the operation, before we went to the office.

Q:

So even there was somebody to sign, they could not be there to witness whether the items seized were indicated in the property seized, were the items recovered from the alleged accused?

A:

There was nobody.

Q:

So you wanted them to sign, to make any elected official to sign the inventory receipt after you have prepared the same, and the accused refused to sign. Or you intended to have another person, one of the three I have mentioned earlier either the representative from the media, DOJ or elected official to sign the inventory receipt you prepared after the conduct of operation, after the things were indicated in the receipt, these people I mentioned earlier are not meant to be present?

A:

There was intention for them to be present because if there was no intention, we would not bother to go to the barangay hall, we would just be wasting our time.

Q:

You went to the barangay hall?

A:

Yes, sir.

Court:

Sometime media are not cooperative. That is always the observation, media are not cooperative even in the presentation of evidence after the operation. How much more before? So for me, this provision is really a fatal exercise. They refused, you should also understand that they have their own work, this media, especially if it is only one packet. In the buy bust operation only one packet, it is only a small amount of shabu, they are not interested, it is not newsworthy. They are present when it is a big hull of operation.”[29]

The reasons advanced by PO2 Luardo to justify the absence of the aforementioned witnesses are flimsy. It may be well to stress that the pre-operation briefing was conducted in the morning and the supposed buy-bust would take place at 5PM of the same day. Without any doubt, there was enough time for the apprehending police officers to contact the required three (3) witnesses or just any of them. It bears stressing that: “it is imperative for the prosecution to establish a justifiable cause for non-compliance with the procedural requirements set by law. The procedures outlined in Section 21 of R.A. 9165 are not merely empty formalities—these are safeguards against abuse, the most notorious of which is its use as a tool for extortion.”[30] In the case before us, the prosecution failed to give any plausible reason to justify the police officers' non-compliance with Section 21, supra.

On this note, it is worthy to mention that the Senate and House of Representatives, in its effort to assist the law enforcement agencies in combating the menace, that is, drug addiction, passed RA 10640 otherwise known as “An Act To Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2002'”, the pertinent portion of which reads, viz -

“Section 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instrument/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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, that noncompliance of 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 and custody over said items.

Just like its predecessor, the amendment which was passed on June 9, 2014 and approved by the president on July 15, 2014 still requires the presence of witnesses to the taking of photograph and inventory of the seized illegal drugs although this time only two (2) witnesses are required, that is, any elected public official and a

representative from the National Prosecution Services (NPS) or media. This just shows that the presence of these aforementioned witnesses are not only necessary but altogether crucial to the prosecution of drug cases.

That is why, it saddens us why the police officers would still fail to comply with this witness- requirement.

Significantly, given the non-compliance with the requirements prescribed by RA 9165 and its implementing Rules, the presumption of regularity in the performance of official duties cannot be used against accused-appellant. “. . ., such presumption obtains only when there is no deviation from the regular performance of duty. Where the official act in question is irregular on its face, the presumption of regularity cannot stand.”[31] As it is, there is now a lack of an assurance that the integrity and evidentiary value of the illegal drug was preserved. For this, acquittal of the appellant is in order.

A final note

In a case brought before us, we opined, citing *Fernandez v. People*, that -

“Drug addiction is a growing serious society menace. It has found its way into the very social fabric of our society, with its vicious hands spreading wide and rapidly tearing our society apart. It has created monsters in our midst. It has destroyed many lives. In fact, innocent people have become random victims of this menace. Nevertheless, we are constrained to acquit accused-appellant for the prosecution's dismal failure to comply with the procedure required by RA 9165 and its Implementing Rules and Regulations and to explain its non-compliance therewith, because from such failure arises speculations and conjectures as to the guilt of the accused-appellant. It is well entrenched in our jurisprudence that:”[32]

'In all criminal cases, mere speculation and probabilities cannot substitute for proof required to establish the guilt of an accused beyond reasonable doubt. Suspicion no matter how strong can not sway judgment. Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can be overthrown only by proof reasonable doubt. When the guilt of the accused has not been proven with moral certainty, it is our policy of long standing that the presumption of innocence of the accused must be favored and his exoneration be granted as a matter of right.'[33]

WHEREFORE, the appeal is GRANTED, the Decision dated 12 November 2012 of the Regional Trial Court, 7th Judicial Region, Branch 57, Cebu City is REVERSED and SET ASIDE. Accused Leslie Bahina is hereby ACQUITTED of Violation of Section 5, Article II of RA 9165 on ground of reasonable doubt. He is ordered immediately RELEASED from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, New Bilibid Prisons, Muntinlupa City for immediate implementation. The Director of the New Bilibid Prisons is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

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

[1] Original Records, pp. 141-146.

[2] Original Records, pp. 1-2.

[3] Order dated August 13, 2009, Original Records, p. 18.

[4] Original Records, p. 23.

- [5] Original Records, p. 101.
- [6] Original Records, p. 8.
- [7] Exhibit “E”, Original Records, p. 103.
- [8] Exhibit “D”, Original Records, p. 102.
- [9] Exhibit “N”, Original Records, p. 107.
- [10] Exhibit “J”, Original Records, p. 11 and p. 105.
- [11] Exhibit “K”, Original Records, p. 11 and p. 105.
- [12] Exhibit “H”, Original Records, p. 10.
- [13] Exhibit “I” and Exhibit ”O” Original Records, p. 11 and p. 107.
- [14] Exhibit “M-1”, Original Records, p. 9 and p. 106.
- [15] Exhibit “M”, Original Records, p. 9 and p. 106.
- [16] Exhibit “L”, Original Records, p. 12.
- [17] Exhibit “F”, Original Records, p. 14.
- [18] Original Records, p. 13.
- [19] Exhibit “P”, Original Records, p. 6.
- [20] Original Records, p. 146.
- [21] Original Records, pp. 143-146.
- [22] Rollo, pp. 4-5. With Medical Certificate attached at p. 6.
- [23] Rollo, 8-10.
- [24] People of the Philippines v. Mangi Lumambas Adam, G.R. No. 143842, October 13, 2003. Citing People vs. Montano, 337 SCRA 608 (2000); and People vs. So, 370 SCRA 252 (2001) & People vs. Julian-Fernandez, 372 SCRA 608 (2001).
- [25] 362 SCRA 69 (2001).**
- [26] People vs. Kamad, G.R. No.174198, January 19, 2010, 610 SCRA 295.
- [27] TSN of February 13, 2012, p. 12.
- [28] Ibid., pp. 12-13.
- [29] Id., pp. 13-15.
- [30] People of the Philippines v. Romeo Oniza y Ong and Mercy Oniza y Cabarle. G.R. No. 202709, July 3, 2013. Citing People of the Philippines vs. Sanchez, G.R. No. 175832, October 15, 2008, 569 SCRA 194; People of the Philippines vs. Secreto, G.R. No. 198115, February 22, 2013; and People of the Philippines vs. Umipang, G.R. No. April 25, 2012, 671 SCRA 324.
- [31] Supra at note 13. Citing People of the Philippines vs. Obmiranis, G.R. No. 181492, December 16, 2008, 574

SCRA 140.

[32] People of the Philippines v. Cristino Dibdib Cortes, CA-G.R. CR. No. 01421, 30 October 2013.

[33] Roberto Fernandez vs. People of the Philippines, et. al., G.R. No. 138503, September 28, 2000.

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