

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIONITO TAMAYO Y RAMIREZ AND BIBIAN YCONG Y SIDO,
ACCUSED-APPELLANTS.**

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HERNANDO, J:

Before Us is an Appeal from the Joint Judgment[1] dated June 25, 2013 rendered by the Regional Trial Court (RTC), Branch 30 of Dumaguete City, finding accused-appellants Marionito Tamayo y Ramirez and Bibian Ycong y Sido guilty beyond reasonable doubt for Violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002” in Crim. Case No. 20854 as well as for Violation of Sec. 11, Art. II of R.A. 9165 in Crim. Case Nos. 20855 and 20856, respectively. The dispositive portion of the assailed Joint Judgment reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 20854, the accused MARIONITO TAMAYO Y RAMIREZ and the accused BIBIAN YCONG Y SIDO are hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.05 gram of shabu in violation of Section 5, Article II of RA 9165 and are hereby sentenced each to suffer a penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings “BSY & MRT-BB-11/19/11” containing 0.05 gram of shabu, subject of this case, is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 20855, the accused MARIONITO TAMAYO Y RAMIREZ is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.01 gram of shabu in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The one (1) heat-sealed transparent plastic sachet with markings “MRT-P- 11/19/11” containing 0.01 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

3. In Criminal Case No. 20856, the accused BIBIAN YCONG Y SIDO is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.18 gram of shabu in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

In the service of sentence, the accused Marionito Tamayo y Ramirez and Bibian Ycong y Sido shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[2]

The Antecedents:

Accused Marionito Tamayo y Ramirez and Bibian Ycong y Sido were charged with Violation of Section 5, Article II of R.A No. 9165 in an Information[3] dated November 21, 2011, the accusatory portion of which reads:

That on or about the 19st (sic) day of November, 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually aiding one another not being then authorized by law, did, then and there willfully, unlawfully and feloniously sell and deliver to a poseur buyer, One (1) heat sealed transparent plastic sachet containing an approximate weight of 0.05 gram of methamphetamine Hydrochloride commonly called “shabu” a dangerous drug.

Contrary to Sec. 5, Art. II of RA 9165.

On the other hand, accused Marianito Tamayo y Ramirez was also charged with Violation of Sec. 11, Art. II of R.A. No. 9165, in a separate Information[4] which reads:

That on or about the 19th day of November, 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there, willfully, unlawfully and feloniously possess and keep one (1) heat-sealed transparent plastic sachet containing a total of 0.01 gram of white crystalline substance of Methamphetamine Hydrochloride commonly called shabu, a dangerous drug.

Contrary to Sec. 11, Art. II of RA 9165.

In like manner, accused Bibian Ycong y Sido was likewise separately charged with Violation[5] of Section 11, Article II of R.A. No. 9165 in an Information which reads:

That on or about the 19th day of November, 2011 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess and keep five (5) heat-sealed transparent plastic sachet containing a total of 0.18 gram of white crystalline substance of Methamphetamine Hydrochloride commonly called shabu, a dangerous.

Contrary to Sec. 11, Art. II of RA 9165.

When arraigned[6], the two accused, assisted by their counsel, pleaded not guilty to the respective crimes charged against them. The cases were then consolidated and tried jointly.[7]

Version of the Prosecution

The prosecution presented Police Officer 3 Rex Oliver Tan as its sole witness. Police Chief Inspector Josephine Llena, Barangay Kagawad Dandy Catada of Barangay Looc, Ramonito Astillero of the Department of Justice, Police Officer 1 Roderick Maquinta and PDEA Intelligence Officer 1 Julieta Amatong were also supposedly presented for examination. However, the parties agreed to stipulate on facts with regards to the gist of their respective testimonies. The combined testimonies of all the prosecution witnesses, when woven together, established the following facts:

On November 19, 2011 at about 2:00 in the afternoon, PO3 Tan together with the confidential informant, local PDEA operative Jason Cabatania as well as police officers Dario Paquera, Roderick Maquinta, Ramsteadt Balbuena, Orlando Gonzaga and Florito Fajardo, were in Zone 3, Barangay Looc, Dumaguete City particularly near the basketball ball area of said place. The team was originally tasked to conduct an anti-illegal drugs operation against a certain Jerry Paculanang, who was reportedly engaged in illegal drug activities in said place.

When the rest of the team strategically positioned themselves around the area, PO3 Tan and the confidential

informant, while locating the subject person, Jerry Paculanang, chanced upon a male person later identified as accused Marionito Tamayo. This Marionito Tamayo was with two female companions playing a card game locally known as “tong-its”. According to PO3 Tan, when he and the confidential informant were approaching, said accused asked him if they were to buy shabu to which replied that he would only get Php500.00 worth.[8] Subsequently, accused Tamayo ordered his companion, co-accused Bibian Ycong, to get a sachet of shabu.

As instructed, accused Ycong stood up and went to get the sachet of shabu which was partially hidden at the rooftop of a nearby hut, located about 1.5 meters away from the table where the three were playing tong-its. PO3 Tan followed her. Thereafter, PO3 Tan handed to accused Ycong the pre-marked Php500 bill originally intended for the operation against the original subject, Jerry Paculanang. In turn, accused Ycong gave to PO3 Tan a sachet of suspected shabu. Upon his receipt thereof, PO3 Tan immediately arrested accused Bibian Ycong. He also confiscated from accused Ycong a red Fortune brand cigarette pack where sachet of shabu earlier sold to PO3 Tan was taken, which also contained five more sachets of suspected shabu and a red lighter. PO3 Tan then informed accused Ycong of the nature and cause of her arrest as well as her constitutional rights in the Visayan dialect, a language known to and understood by accused Ycong.

At that time, PO3 Tan also requested his other team members to hold accused Tamayo. Officers Fajardo and Pacquera held accused Tamayo while officers Maquinta and Balbuena held accused Ycong.

PO3 Tan declared that the recovered sachets of shabu from accused Ycong were all placed in his left hand. In order to segregate the sachet of suspected shabu subject of the sale from the others, he used the pre-marked Php500.00 bill to wrap it while the other sachets of shabu taken from accused Ycong remained in the Fortune cigarette pack. PO3 Tan then conducted a body search on accused Tamayo which yielded the recovery of one piece of sachet containing suspected shabu from the small pocket of his pants near the waistline. Thereafter, accused Tamayo was arrested and apprised of his constitutional rights. PO3 Tan held in his right hand said one piece of sachet containing suspected shabu confiscated from accused Tamayo.

After knowing the full names of the accused, PO3 Tan subsequently marked the confiscated items. The sachet of suspected shabu that was the subject of the sale was marked with “BSY & MRT-BB-11/19/11” and a signature. The initials “BSY” and “MRT” referred to the names of the two accused, Bibian Sido Ycong and Marionito Ramirez Tamayo; “BB” stood for buy-bust operation and “11/19/11”, the date of the arrest. The Fortune brand cigarette pack recovered from the possession of accused Ycong was likewise marked with “BSY-P-11/19/11” and a signature and the five sachets of suspected shabu found inside it were marked with “BSY-P1-11/19/11” to “BSY-P5-11/19/11”, all with signatures too. The letter “P” stood for the offense of possession of illegal drugs and the numbers immediately following differentiates the sachets from each other. The rest of the numbers referred to the date of the incident.

On the other hand, the sachet of suspected shabu that PO3 Tan recovered from accused Tamayo was also marked by him with “MRT-P-11/19/11” and a signature. The initials “MRT” represented the name of accused Marionito Ramirez Tamayo and the letter “P”, the offense of possession of illegal drugs and the “11/19/11”, the date of the arrest.

After the confiscated items were marked, an inventory thereof was conducted which was witnessed by barangay kagawad Dandy Katada, DOJ representative Ramonito Astillero, and media representative Neil Rio who had arrived by then. The witnesses all signed the Certificate of Inventory together with PO3 Tan, who signed it in his capacity as the seizing officer as well police officer Maquinta who prepared it. Photographs were likewise taken during the signing of the witnesses and the sealing of the envelope.

Thereafter, the two accused and the confiscated items were brought to the Dumaguete City Police Station for

proper disposition and booking. From the area to the Dumaguete City Police Station, PO3 Tan had custody of all the items confiscated at all times, which were then placed in a tape-sealed brown envelope with the names of Bibian Ycong y Sido and Marionito Tamayo y Ramirez and PO3 Tan's signature.

In the station, PO3 Tan prepared the memorandum request for laboratory examination of the items confiscated and drug test for the two accused. Said memorandum request was signed by Police Superintendent Crisaleo Roleda Tolentino and was personally submitted by PO3 Tan to the Negros Oriental Provincial Crime Laboratory together with the all the items recovered and the two accused.

PCI Josephine Llana received from PO3 Tan at 4:28 in the afternoon of November 19, 2011 the one tape-sealed brown envelope with names Bibian Ycong y Sido and Marionito Tamayo y Ramirez and a signature containing seven (7) heat-sealed transparent plastic sachets with markings "BSY&MRT BB 11/19/11" with signature; "MRT P-11/19/11" with signature; and "BSY-PI-11/19/11 to BSY-P5-11/19/11" with signature, each sachet containing white crystalline substance.

PCI Llana re-marked the specimens as follows: Specimen "A D 215-11-JSL" for the brown envelope and Specimens "A-1 to A-7 D-215-11 JSL" for the seven heat-sealed transparent plastic sachets, respectively. When weighed, the corresponding net weights were determined and recorded as follows: A-1 (BSY&MRT-BB), 0.05 gram; A-2 (BSY-P1), 0.04 gram; A-3 (BSY-P2), 0.07 gram; and A-4 (BSY-P3), 0.05 gram; A-5 (BSY-P4), 0.01 gram; A-6 (BSY-P5), 0.01 gram; and A-7 (MRT-P), 0.01 gram.

Thereafter, PCI Llana conducted a qualitative examination on these specimens and all yielded positive to the tests of Methamphetamine Hydrochloride, a dangerous drug under R.A. 9165. The latter's findings and conclusions were all embodied in her Chemistry Report No. D-215-11. Subsequently, PCI Llana re-sealed the specimens she examined and stored them inside the steel cabinet in the evidence room of the crime laboratory prior to the submission to the Court on January 6, 2012 for the prosecution of all these three (3) cases.

PCI Josephine S. Llana also conducted screening and confirmatory tests on the urine samples taken from the living persons of the accused Bibian Ycong y Sido and Marionito Lamayo y Ramirez. The examination also yielded a positive result for the presence of Methamphetamine, a dangerous drug, as indicated in the Chemistry Report No. CDT-198/199-11.

Version of the Defense

The defense presented the two accused Bibian Ycong and Marionito Tamayo and the latter's wife, Jocelyn Tamayo, as its witnesses. Woven together, the testimonies of these witnesses established the following facts:

Accused Bibian Ycong is a resident of Tapon Norte B, San Jose, Negros Oriental and a fish vendor. She has a live-in partner named Herminildo Rapales who works at the Dumaguete pier. Accused Marionito Tamayo, on the other hand, is a construction worker and a resident of Zone 3, Barangay Looc, Dumaguete City Negros Oriental. He is married to Jocelyn Tamayo with two children.

In the early afternoon of November 19, 2011, accused Bibian Ycong was initially at the Dumaguete pier to accompany her live-in partner. Later, she went to the Looc basketball court located about 50 meters away in order to watch the preparation of the Sandurot Festival parade that was to start at 3:00 that afternoon.

Accused Ycong was surprised when a person, later known as police officer Opeña, together with companions approached and held her. She was addressed as "Rose" and was told not to move. Accused Ycong protested and informed the police officer that her name is Bibian and not Rose and that she could show him her Identification Card to prove it. However, accused Ycong was handcuffed and searched by Officer Opeña which resulted to the

confiscation of her wallet containing an amount of Php1,250.00 which he had earned from selling fish. Thereafter, accused Ycong was made to sit near a table where a deck of cards, some money and a few more things were laid out. Allegedly, officer Opeña told his companions to include shabu with those items. According to accused Ycong, she asked officer Opeña why was she treated that way when she did not do anything wrong. She was only told by officer Opeña to explain herself in court.

Accused Tamayo, on the other hand, was with his wife, Jocelyn Tamayo and their children aged 4 and 3 years old at that time, at the Looc basketball court in Zone 2, Looc, Dumaguete also with the intention to watch the Sandurot Festival parade. Jocelyn, however, went to her sister's house located at the interior portion of Zone 2, to ask the latter if she would also watch the parade. She left accused Tamayo and their 3-year old child in Looc basketball court.

Meanwhile, accused Tamayo saw Officer Opeña and his companions wrestling with accused Ycong. Accused Tamayo then asked Officer Opeña and his companions what they were doing with Gladys, referring to accused Bibian Ycong who was known in the area as such. He was only told: "Don't get involved because I might include you". Accused Tamayo continued to fan his child who was sleeping on the table. Thereafter, police officer Paquera approached him and insinuated that he was playing cards. He denied it as he was allegedly attending to his sleeping child. According to accused Tamayo, he knew police officer Paquera being a former maritime police in Barangay Looc

Notwithstanding accused Tamayo's denial, Officer Paquera continued to search him but nothing was recovered from him except the deck of playing cards. Accused Tamayo was then made to sit next to the table where the deck of playing cards was laid out. The accused Tamayo asked Officer Paquera, "What is this, Sir? He was told: "This is illegal gambling, dong."

From her end, Jocelyn Tamayo, while waiting for her sister who took a bath, heard shouts from the place where she had left her husband and other child. She immediately rushed to the area and saw a woman grappling with some persons. Jocelyn Tamayo heard her husband interfere and told those persons to stop because the one they were wrestling with was a woman. She also heard one of them telling her husband to shut up, otherwise, he might be included in the charge.

Subsequently, Jocelyn saw that it was later her husband who was being wrestled by the men. She wanted to intervene but was stopped by her father and was advised not to go near as she might be included in the foray. During the commotion, her sleeping child awoke. Upon seeing his father being wrestled with, the child crawled under the table and cried. So, Jocelyn Tamayo called out to her son and got hold of him. Afterwards, someone advised her to report her husband's arrest to the barangay officials. However, she could not find any official in the barangay hall since everyone was busy with the Sandurot preparations. Thus, she went to the house of Barangay Kagawad Dandy Catada and reported to him the incident involving her husband. Kagawad Catada told her that he will affix his signature on a document but only based on what he actually witnessed and proceeded to the place of incident.

Jocelyn Tamayo went home first so she could allow her son to take medicine who she noticed was then having a fever. She returned to the area just in time to see her husband and the woman being made to board the police patrol vehicle. Jocelyn Tamayo, together with her two young children, boarded a pedicab and followed the vehicle to the Dumaguete City police station. There, she was asked to buy water for her husband.

The two accused were brought to the second floor of the building. Later, accused Tamayo and his wife heard one of the officers ask what to do with him. The two of them also heard the reply of the other police officer that he would be charged with Section 5. Accused Tamayo asked what Section 5 was all about and was informed that he

was allegedly selling shabu. Accused Tamayo and his wife cried. They denied being involved in any illicit drug activity. The accused Tamayo was then made to drink water before he and accused Ycong were placed in their respective detention cells.

Both accused denied the charges levied against them. They also denied that Officers Rex Oliver Tan and Roderick Maquinta were present at the time of the arrest. They asserted that police officer Opeña, who was then present, was however not presented in court. The accused Tamayo also asserted that he did not know and was not informed of his positive drug test result.

On June 25, 2013, the court a quo rendered its assailed Joint Judgment finding the two accused Marionito Tamayo y Ramirez and Bibian Ycong y Sido guilty of the charges against them.

Hence, this appeal separately filed by accused-appellants Marionito Tamayo and Bibian Ycong. Accused-appellant Marionito Tamayo anchored his appeal on the following assignment of errors:

The Assigned Errors[9]: paul

I. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF SELLING AND POSSESSING ILLEGAL DRUGS DESPITE THE FAILURE OF THE PROSECUTION TO PROVE ALL THE ELEMENTS OF THE CRIMES CHARGED ESPECIALLY OF THE CORPUS DELICTI OF THE CRIME, OF WHICH THE IDENTITY AND INTEGRITY WERE COMPROMISED;

II. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF SELLING AND POSSESSING ILLEGAL DRUGS DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM FOR HAVING BEEN OBTAINED UNDER AN INVALID WARRANTLESS ARREST IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS AND BY IGNORING THE ILL-MOTIVE OF THE POLICE OFFICERS AND RELYING ON THE PRESUMPTION OF REGULARITY IN CONVICTING APPELLANT;

III. THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT IS GUILTY OF SELLING AND POSSESSING ILLEGAL DRUGS DESPITE THE FACT THAT THE POLICE OFFICERS VIOLATED SECTION 21, OF R.A. 9165;

IV. THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT GUILTY OF SELLING AND POSSESSING ILLEGAL DRUGS DESPITE THE FACT THAT THE POLICE OFFICER FAILED TO PROVE CONSPIRACY AND THE POLICE OFFICER WHO ARRESTED THE ACCUSED IS NOT CREDIBLE AND THE PROSECUTION FAILED TO PRESENT THE MARKED MONEY. LIKEWISE, IT FAILED TO INFORM APPELLANT OF HIS CONSTITUTIONAL RIGHTS.

On the other hand, accused-appellant Bibian Ycong raised the following assigned errors[10]:

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BIBIAN YCONG DESPITE THE FATAL INCONSISTENCIES AND INCREDULITY IN THE TESTIMONY OF SOLE PROSECUTION WITNESS, PO3 REX OLIVER TAN, WHICH CAST SERIOUS DOUBT AS TO TRUTHFULNESS OF THE LATTER'S TESTIMONY;

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BIBIAN YCONG OF THE OFFENSES CHARGED WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

The Court's Ruling:

We find merit in both appeals.

For being interrelated, the issues raised by both appellants shall be dealt with jointly and successively.

At the outset, We must stress that the Constitution guarantees the accused's presumption of innocence until proven guilty.[11] Section 14(2) of the Bill of Rights (Article III) provides that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.[12]

Section 2, Rule 133 of the Rules of Court likewise states that, in a criminal case, the accused is entitled to an acquittal, unless his guilt is proved beyond reasonable doubt.[13] Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, which produces absolute certainty.[14] Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[15]

The elements necessary in every prosecution for the illegal sale of shabu are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.[16] Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of corpus delicti which means the "actual commission by someone of the particular crime charged." [17] The corpus delicti in cases involving dangerous drugs is the presentation of the dangerous drug itself.[18]

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[19]

Here, appellant Tamayo argues that the identity and integrity of the dangerous drugs subject of the present case were not properly preserved and proven by the prosecution. Firstly, he asserts that the sachet of shabu that was the subject of the sale and those sachets of shabu that were recovered from him and his co-appellant's possession were co-mingled before they were marked as all of them were in the hands of the arresting officer, PO3 Tan, after they were seized and confiscated. Accordingly, appellant Tamayo insists that it would be impossible for PO3 Tan to determine which one was the subject of the illegal sale and which were the subject of the illegal possession, thus, creating doubts on their identities.

Secondly, appellant Tamayo questions the correct marking of the shabu subject of the sale. He points out that PO3 Tan kept on changing his testimony as to the correct marking thereon. In fact, even in the latter's affidavit of arrest, there was never any mention at all of any marking on the supposed sachet of shabu subject of the sale and that in said affidavit, the sachet of shabu subject of the sale was not also listed as one of those confiscated at the time of the arrest. In like manner, during the direct testimony of PO3 Tan in court, the latter initially identified the markings thereon as "BSY-B-11/19/11" but later changed his account on the marking, not in his own volition, but only after the prosecutor showed to him the sachet of shabu with markings "BSY&MRT-BB-11/19/11". There was likewise no explanation made by PO3 Tan with respect to the discrepancy in his identification on said marking. Furthermore, appellant Tamayo points out that the signature which constituted part of the marking was likewise not testified to nor identified by PO3 Tan. Hence, it remains a mystery as to who had placed said signature.

The above-mentioned inconsistency was also pointed out by appellant Ycong and she further assails the inconsistencies in PO3 Tan's testimony as to when the marking was actually made. According to her, PO3 Tan first declared that he marked the plastic sachet of shabu right after he recovered them but later changed his testimony when he said that he marked them after he effected the arrest and informed appellants of their constitutional rights. Furthermore, appellant Ycong notes the contradictions in PO3 Tan's testimony that it was police officer Fajardo who held appellant Tamayo when said police officer accordingly testified in another case

before another branch also involving both accused for illegal gambling that he was not present during the arrest. Also, appellant Ycong questions the inconsistency in PO3 Tan's declaration as to who took photographs during the conduct of inventory and that the testimony of PO3 Tan was filled with incredibility and unworthy of belief.

Appellee People insists otherwise. It maintains that the prosecution evidence has satisfactorily established the integrity of the physical evidence involved in the instant cases, starting from the valid seizure of the subject shabu in a buy-bust operation, the buy-bust money, and the Fortune cigarette pack which contained five (5) other sachets of shabu, the marking of the same seized items, up to their inventory and turn over to the Negros Oriental Provincial Crime Laboratory for drug test and examination. It adds that the inventory of the seized drugs was witnessed by representatives from the local media, the DOJ and the members of the barangay council. Accordingly, it argues that the integrity of the drugs seized was preserved and intact, and that there is no doubt that the sachets of drugs seized from the appellants were the ones examined for chemical analysis and later yielded positive results to be shabu. They were the same items which were photographed for proper identification and later marked and presented in court and eventually identified by the prosecution witness to be the same items that they bought and recovered from the appellants.

After an assiduous assessment of the evidentiary records as well as the respective arguments of the parties, We find merit in the contentions of the appellants. The prosecution has failed to prove by moral certainty the guilt of appellants on the charges pressed against them.

Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug.[20] In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[21] Of paramount importance, therefore, in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt.[22] Given the unique characteristic of dangerous and illegal drugs which are indistinct, not readily identifiable, and easily susceptible to tampering, alteration, or substitution, either by accident or otherwise, there must be strict compliance with the prescribed measures to be observed during and after the seizure of dangerous drugs and related paraphernalia, during the custody and transfer thereof for examination, and at all times up to their presentation in court.[23]

Thus, 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 RA No. 9165 fails. [24]

Dangerous Drugs Board Regulation No. 1, Series of 2002 (which implements R.A. No. 9165) defines chain of custody as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to the receipt in the forensic laboratory, to safekeeping and the presentation in court for identification and eventual destruction.[25]

The Supreme Court explained the importance of establishing the chain of custody over the seized drug in the recent case of *People of the Philippines v. Joselito Beran y Zapanta @ "Jose"*[26], as follows:

The purpose of the requirement of proof of the chain of custody is to ensure that the integrity and evidentiary value of the seized drug are preserved, as thus dispel unnecessary doubts as to the identity of the evidence. To be admissible, the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers, until it was tested in the laboratory to determine its composition, and all the way to the time it was offered in evidence.

Thus, crucial in proving chain of custody is the marking of the seized drugs or other related items immediately

after they are seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Long before Congress passed R.A. No. 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs casts reasonable doubt on the authenticity of the corpus delicti.

Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, "planting," or contamination of evidence. (Emphasis supplied)

Long before Congress passed RA 9165, the Supreme Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the corpus delicti and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution.[27] Thus, in *People v. Laxa* and *People v. Casimiro*, the High Court held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt.[28] These rulings are refinements of the Supreme Court's holdings in *People v. Mapa* and *People v. Dismuke* that doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.[29]

Verily, the identity and integrity of the drugs subject hereof are highly doubtful. The lone prosecution witness failed to identify with certainty that the drug specimens presented in court are the same illegal drugs that were confiscated from appellants Tamayo and Ycong. This is evident from his erroneous identification on the markings made on the drug seized that was the subject of the illegal sale. PO3 Tan initially identified the marking on the dangerous drug subject of the sale as "BSY-B" and the date of the arrest. Pertinent portions of PO3 Tan's testimony during the direct examination is worth reiterating, thus:

Pros. Montenegro

Q: If you will be shown the plastic sachets and the Fortune, will you still be able to identify them?

A: Yes ma'am.

Court

Q: How will you be able to identify them?

A: by looking the signatures and the date sir.

Q: Signatures?

A: Yes sir. The markings sir.

Q: What markings did you make?

A: Their initials, Your Honor.

Q: What initial?

A: For Bibian, it's BSY.

Q: Which one, all the sachets?

A: BSY for possession and BSY for

Q: How about the sachet that you bought, what did you mark it with?

A: Ah BSY-B, buy bust and the date.

Q: BSY?

A: BSY-B- the date, sir.

Q: What's the date?

A: November 19, 2011.

Q: For the shabu that you bought?

A: Yes sir.

Q: How about the shabu that you found?

A: BSY-P1 up to P6 I think dash the date sir, 11/19/11.

Q: There were six (6) sachets?

A: Yes sir, if I am not mistaken, I forgot.

Q: If you're not mistaken. How about the shabu from Tamayo?

A: MRT-P-11/19/11.

Court

(To the prosecutor) Show him.[30]

X x x x x x x x

However, as correctly pointed out by appellants, when the sachet subject of the sale containing purported shabu was shown to PO3 Tan, the markings indicated thereon are “BSY&MRT-BB-11/19/11”, thus:

Pros. Montenegro

Q:

Showing to you the plastic sachet with markings BSY&MRT-BB-11/19/11, from where did you recover this plastic sachet?

A:

This is from Bibian Ycong ma'am.

Q:

What does BB mean?

A:

Buy bust ma'am.

Q:

What does BSY&MRT mean?

A:

Bibian Sigo Ycong and Marionito Ramirez Tamayo.

Q:

And what is the date?

A:

November 19, 2011.

Q:

What is the meaning or the significance of that date?

A:

This is the day when I arrested them.

x x x x x x x x

COURT

What are the markings there?

Pros. Montenegro

BSY&MRT-BB-11/19-11

COURT

So it is not BSY-B-11/19/11 as stated earlier.

PO3 R.O. TAN:

Yes sir.[31]

It is well to note that no explanation on the supposed discrepancy was offered by the prosecution witness on the stand. Hence, said discrepancy was never justified. What is more reprehensible is the discrepancy between this testimony of PO3 Tan and the declaration in his Affidavit of Arrest. In said affidavit of arrest, there was even no

mention at all with respect to the confiscation of the sachet of shabu that was supposedly subject of the sale. It was neither listed as one of the items recovered and that no declaration was proffered with respect to its marking.

We are not unaware of the fact that discrepancies and/or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken ex parte and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer.[32] The general rule – that contradictions and discrepancies between the testimony of a witness and his statements in an affidavit do not necessarily discredit him – is not without exception, as when the omission in the affidavit refers to a very important detail of the incident that one relating the incident as an eyewitness would not be expected to fail to mention, or when the narration in the sworn statement substantially contradicts the testimony in court.[33]

Here, substantial discrepancy is present. How the apprehending team could have omitted such a basic and vital fact and information in the initial handling of the seized drugs truly baffles and alarms Us.[34] The seized drug subject of the sale itself is the corpus delicti of the offense. As no compelling justification was adduced, the discrepancy cannot be excused considering the vitality of the information and the fact that the arresting officer who executed the affidavit is not a mere ordinary mortal but a police officer who had been supposedly exposed to, trained and is already experienced in executing affidavits in the course of the performance of his duty. What is worse is the prosecution witness' failure to provide for any explanation or justification on such omission when he was made to identify the said Affidavit in court.

The improper identification of the markings in court did not only pertain to the sachet of shabu subject of the sale, there was likewise no proper identification with respect to the other sachets purportedly recovered from the possession of the two appellants. It bears stressing that while in the initial testimony of PO3 Tan, it made mention of a signature on the markings, the same, however, was not properly expounded. It is noteworthy that said signature found on the sachets of shabu was supposedly part of the markings and yet, it was not duly identified and specifically mentioned in court, except only pertaining to the signature found on the red Fortune brand cigarette. The failure of the prosecution to categorically identify the signature as part of the markings in court effectively raises serious doubts as to the identity and integrity of the items presented in court. The improper identification in court is fatal to the case of the prosecution.

Again, We must emphasize that it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.[35] In the present case, with reasonable doubt as to the authenticity of the corpus delicti, the acquittal of appellants of the crimes charged is in order.

This is further strengthened by the failure of the lone prosecution witness to categorically identify in court the purported marked money used as a consideration in the supposed illegal sale. Verily, in prosecuting a case for the sale of dangerous drugs, the failure to present marked money does not create a hiatus in the evidence for the prosecution, as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.[36] Here, however, there is unresolved doubt as to whether or not the actual sale transaction ever took place and the drug presented in court is the same illegal drug that was the subject of the supposed illegal sale. Hence, while presentation of the buy-bust money, as a lone defect, is not indispensable to the prosecution of a drug case, again it raises doubts regarding the regularity of the buy-bust operation[37].

Moreover, it is well to note too that the two appellants in these cases were arrested when the police operatives were supposedly conducting a buy-bust operation against another subject. Hence, it is safe to presume that prior to the supposed actual sale of illegal drugs to PO3 Tan, they were not yet subjected to any prior surveillance by the police authorities on their alleged engagement in illegal activities. Accordingly, there is a more pressing reason to

prove the actual sale which eventually resulted to the arrests of these two appellants. On this score, the need to establish the marked money as the consideration of the illegal sale is of great importance. Thus, the failure of the prosecution to do so is fatal to its case.

In the same vein, the noted inconsistencies and discrepancies, material or otherwise, in the narration of facts by PO3 Tan effectively destroys the credibility of his testimony. True, the trial court's assessment of the credibility of witnesses and their testimonies, as a rule, is entitled to great weight and will not be disturbed on appeal.[38] This rule, however, does not apply where it is shown that any fact of weight and substance has been overlooked, misapprehended or misapplied by the trial court.[39] With the foregoing discussion, the present case falls under the above exception and, hence, a deviation from the general rule is justified.

In addition, it is highly doubtful if at all conspiracy between the two appellants existed. From the testimony of PO3 Tan himself, it was only appellant Bibian Ycong who was immediately arrested right after the supposed illegal sale was consummated. On the other hand, appellant Marionito Tamayo was only arrested after a piece of sachet containing suspected shabu was recovered from his possession. If indeed the two appellants conspired with the illegal sale of dangerous drug to PO3 Tan, how come the two appellants were not simultaneously arrested? This failure only creates uncertainties on the part of the prosecution and contrarily, strengthens the assertion of appellant Tamayo that he was only included in the charge because he interfered with the arrest of appellant Bibian Ycong.

While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt.[40] The presumption of regularity is merely just that - a mere presumption disputable by contrary proof and which when challenged by evidence cannot be regarded as binding truth.[41]

Here, this Court holds and so rule that the totality of the presented evidence do not support a finding of guilt with the certainty that criminal cases require. The unjustifiable failure of the prosecution witness to properly identify in court the subject specimens as well as the marked money coupled with his inconsistencies and discrepancies in his testimony effectively create a reasonable doubt on whether the shabu seized from the appellants were the same shabu 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 drug bought and sold as well as possessed, the body of the crime - the corpus delicti - has not been adequately proven.[42] In effect, the prosecution failed to fully prove the elements of the crime charged.[43]

In all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish the guilt of the accused beyond reasonable doubt.[44] As the High Court often reiterated, it would be better to set free ten men who might probably be guilty of the crime charged than to convict one innocent man for a crime he did not commit.[45]

As a final note, We quote *People v. Ong*[46] where the Supreme Court held that:

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. While appellant's defense engenders suspicion that he probably perpetrated the crime charged, it is not sufficient for a conviction that the evidence establishes a strong suspicion or probability of guilt. It is the burden of the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required.

In the case at bar, the basis of acquittal is reasonable doubt, the evidence for the prosecution not being sufficient to sustain and prove the guilt of appellants with moral certainty. By reasonable doubt is not meant

that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt. An acquittal based on reasonable doubt will prosper even though the appellants' innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the evidence of the defense. Suffice it to say, a slightest doubt should be resolved in favor of the accused. (Emphasis supplied)

WHEREFORE, in the light of the foregoing, the instant appeals are GRANTED. The Joint Judgment of the Regional Trial Court, Branch 30 of Dumaguete City in Crim. Cases No. 20854, 20855 and 20856 is hereby REVERSED and SET ASIDE for failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellants Marionito Tamayo y Ramirez and Bibian Ycong y Sido as to the respective charges against them. Accordingly, accused-appellants Marionito Tamayo y Ramirez and Bibian Ycong y Sido are hereby ACQUITTED of all the crimes charged against them. Their immediate RELEASE from custody is hereby ordered unless they are being held for some other lawful cause. No pronouncement as to cost.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Penned by Presiding Judge Rafael Crescencio C. Tan, Jr; Rollo, pp. 48-62.

[2] Ibid, p. 27.

[3] Record, p. 3.

[4] Record, p. 58.

[5] Record, p. 153.

[6] Per Order dated July 20, 2012; Record, p. 209.

[7] Per Order dated August 2, 2012; Record, p. 214.

[8] Transcript of Stenographic Notes, January 9, 2013, p. 4.

[9] Rollo, Brief for Accused-Appellant Marionito Tamayo, Assignment of Error, pp. 25-26.

[10] Rollo, Brief for the Accused-Appellant Bibian Ycong y Sido, p. 75.

[11] People v. Climaco, G.R. No. 199403, June 13, 2012.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Ibid.

[19] Ibid.

- [20] People v. Nacua, G.R. No. 200165, January 30, 2013 citing People v. Coreche, G.R. No. 182528, August 14, 2009.
- [21] Ibid.
- [22] Ibid.
- [23] Ibid.
- [24] People v. Sabdula, G.R. No. 184758, April 21, 2014.
- [25] Ibid.
- [26] G.R. No. 203028, January 15, 2014 cited in People v. Sabdula, G.R. No. 184758, April 21, 2014.
- [27] People v. Nacua, G.R. No. 200165, January 30, 2013.
- [28] Ibid.
- [29] Ibid.
- [30] Transcript of Stenographic Notes (TSN), January 9, 2013, pp. 13-15
- [31] TSN, January 9, 2013, pp. 16-18.
- [32] Tabao v. People, G.R. No. 187246, July 20, 2011.
- [33] Ibid.
- [34] People v. Sabdula, G.R. No. 184758, April 21, 2014.
- [35] Sales v. People, G.R. No. 182296, April 07, 2009.
- [36] People v. Rebotazo, G.R. No. 192913, June 13, 2013.
- [37] People v. Martin, G. R. No. 193234, October 19, 2011.
- [38] People v. Salcena, G.R. No. 192261, November 16, 2011.
- [39] Ibid.
- [40] People v. Sabdula, G.R. No. 184758, April 21, 2014.
- [41] Ibid.
- [42] Ibid.
- [43] Ibid.
- [44] People v. De La Cruz, G.R. No. 185717, June 08, 2011.
- [45] Ibid.
- [46] G.R. No. 175940 [Formerly G.R. Nos. 155361-62], February 6, 2008 cited in People v. De La Cruz, supra at note 43.

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