

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARCISO LUMAPAK ALIAS “TEBAN”, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Subject of this appeal is the Joint Judgment[1] of the Regional Trial Court(RTC), Branch 17, Cebu City, in Criminal Cases Nos. CBU-70274 and CBU-70275, dated January 28, 2010, finding accused-appellant Narciso Lumapak guilty of violating Sections 11 and 12 of Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant Narciso Lumapak (“accused Lumapak”) was charged in two Informations with illegal possession of dangerous drugs and of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sections 11 and 12, Article II of R.A. No. 9165, thus:

CBU-70274

“That on or about the 10[th] day of July 2004, at about 3:30 P.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there, have in his possession and under his control the following: Five (5) heat-sealed transparent plastic packets of white crystalline substance with a total weight of 0.15 gram, locally known as “shabu”, containing Methylamphetamine Hydrochloride, a dangerous drug, without being authorized by law.

CONTRARY TO LAW.”[2]

CBU-70275

“That on or about the 10[th] day of July 2004, at about 3:30 P.M. In the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without any lawful purpose, did then and there, have in his possession and control the following:

- a) twelve (12) pcs. unused tin foil;
- b) one (1) roll tin foil;
- c) 38 pcs. empty small plastic packs
- d) 20 pcs. big empty plastic packs
- e) one (1) pair of scissors;
- f) one (1) unit cellular phone (Nokia 5210);
- g) one (1) disposable lighter;
- h) two (2) pcs. blades

fit or intended for smoking, consuming, administering, ingesting, or introducing any dangerous drug into the body.

CONTRARY TO LAW.”[3]

The facts as presented by the prosecution rely mainly on the testimony of its witness PO1 Eriberto Dacalos,[4] thus:

At dawn of July 10, 2004, at around 3:30, a group of police officers, namely, SPO2 Edmund Junco, PO3 Delfin Bontuyan, PO2 Pablo Gentalian, PO2 Roel Leyson, and PO1 Eriberto Dacalos, implemented a search warrant in the house of accused Lumapak at Sitio Kalubihan, Brgy. Talamban, Cebu City.[5]

The search warrant was issued by Hon. Judge Simeon Dumdum upon application of PSInsp Germano Mallari. This application arose from the information the police received that a certain Narciso Lumapak was engaged in illegal sale of drugs in Sitio Kalubihan, Brgy. Talamban Cebu City. To verify this information, PO2 Gentalian and PO1 Dacalos were ordered to conduct a surveillance and investigation. As part of their investigation, the two police officers conducted a “test-buy”, and they succeeded in purchasing from accused Lumapak one sachet of a suspected illegal drugs. Having taken a specimen, the officers took the same to the PNP Crime Laboratory for examination. The results of the examination confirmed that the content of the sachet they bought from accused Lumapak was positive of Methamphetamine Hydrochloride or “shabu”. [6]

With this confirmation, the team of police armed with the search warrant, as previously mentioned, headed to the residence of accused Lumapak to implement the search.

When the group arrived at accused Lumapak's residence, the police knocked on its door.[7] Accused Lumapak himself opened the door, but, upon seeing the group, he did not allow the police to enter his house. SPO2 Junco, thus, informed accused Lumapak that they are from CIDG and that they were there to implement a search warrant. SPO2 Junco then showed him the search warrant. At that same time, accused Lumapak was joined by his wife and son.[8]

The search did not commence until the barangay tanods arrived at the scene. Accused Lumapak conceded to let the police enter his house upon learning the arrival of the tanods.[9] PO1 Dacalos and PO2 Gentalian, who were assigned as searchers, then searched the house while the tanods acted as witnesses. Accused Lumapak, meanwhile, followed through wherever the police searchers were searching. The house was not big enough to fit in five police officers, including the tanods and the accused, so only the tanods and the searchers together with the accused were inside the house during the search.[10]

In his search, PO1 Dacalos found five (5) sachets of the alleged shabu and the alleged drug paraphernalia including a cellphone (Nokia 5210) and cash amounting to Eleven Thousand Pesos (P11,000.00) placed on the second layer of a small table beside a bed. Doing further search on the table, PO1 Dacalos also found in plain view bullets and a 9mm pistol. All these were witnessed by the tanods and accused Lumapak himself.[11]

These recovered items were then given by PO1 Dacalos to the officer assigned as recorder, PO3 Bontuyan.[12] PO3 Bontuyan made two inventory receipts, one for the illegal drugs and paraphernalia and one for the bullets and the 9mm pistol. Both receipts were signed by SPO2 Junco. The same were also signed by the tanods. These receipts were then shown to accused Lumapak, but accused Lumapak only signed the inventory receipt for illegal drugs but not the receipt for the bullets and the firearm.[13]

After conducting the search, the police brought the recovered items to their office. The alleged shabu and drug paraphernalia were then marked by PO2 Leyson and PO1 Dacalos. After the marking, the said officers submitted the alleged shabu, with a letter-request for examination signed by one Salvador Manga, to the PNP Crime Laboratory for examination.[14] The drug paraphernalia, meanwhile, were left at the office in the care of PO2 Leyson.[15]

The examination of the alleged shabu contained in the five (5) heat-sealed transparent packets marked from “NL1” to “NL5”, with a total net weight of 0.15 grams, showed positive result for the presence of Methamphetamine Hydrochloride or shabu, a dangerous drug.[16]

For the defense, it presented the following facts mainly based on accused Lumapak's testimony,[17] which was corroborated by his wife,[18] thus:

On July 10, 2004, at around 2:00 in the morning, accused Lumapak came home from a visit to his mother who suffered a stroke. Then, he had a meal with his son before going to bed.[19]

He had just gone to bed when he heard a loud noise from the outside. He heard the door being banged. So, he got up from bed and, without him opening the door, he saw two people in civilian clothes entering their house. The bed was not that far from the door, so he immediately saw the violent entrance of the strangers. Apparently, the door locked with a chain was forcibly opened.[20]

He was shocked when a flashlight suddenly beamed on his face and a gun pointed at him. He then turned on the lights in order to see clearly. His wife and his son also stood up, but all three of them were immediately brought outside the house. His wife recognized that one of the persons who barged in their house was PO3 Bontuyan, their neighbor, who she knew as a police officer.[21]

Outside the house, accused Lumapak was shown a paper, which the police officers identified as a search warrant. While he, his wife and his son were outside, the police officers, together with two tanods, conducted a search inside their house. He did not know what happened inside. And, after almost two hours of waiting outside, he saw the police officers picked up something in front of the door. He noticed that what the police picked was a black deodorant case. The police officers then opened the deodorant case and poured its contents. Plastic packs then slid out from the case. Seeing these contents, the police then announced that they found shabu and straight off handcuffed accused Lumapak. All these happened without accused Lumapak witnessing the search and without any photograph being taken and any media personnel.[22]

After confiscating the alleged shabu, the police also found some ammunitions and a pistol, which they also took together with accused Lumapak's cash amounting to Twelve Thousand Pesos (P12,000.00), but his wife pleaded that they be given at least One Thousand Pesos (P1,000.00) for their provision. The police then brought accused Lumapak to the CIDG office at Camp Sotero Cabahug, where he learned that he was being charged of illegal possession of shabu.[23]

Accused Lumapak's testimony mainly narrated that the charges against him for illegal possession of shabu and drug paraphernalia were merely fabricated.

After joint trial, the trial court convicted accused Lumapak of illegal possession of dangerous drugs and drug paraphernalia under Sections 11 and 12 of RA 9165 in a Joint Judgment ruling as follows:

“WHEREFORE, premises considered, the Court finds accused NARCISO LUMAPAK GUILTY of the offenses charged in CBU-70274 and CBU-70275 beyond reasonable doubt. Accordingly, accused NARCISO LUMAPAK alias “Teban” is hereby sentenced as follows:

- a) In CBU-70274, he is sentenced to suffer the penalty by imprisonment ranging from twelve (12) years and 1 day as minimum to fourteen (14) years as maximum, also a fine of P300,000.00;
- b) In CBU-70275, he is sentenced to suffer the penalty by imprisonment ranging from six (6) months and 1 day as minimum to two (2) years as maximum, plus a fine of P10,000.00.

Let the articles subject matter hereof be disposed in accordance with law.

SO ORDERED.”[24]

Aggrieved by this ruling, accused Lumapak, through this appeal, comes to this Court assigning to the trial court this lone error:

“THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.”[25]

In convicting accused Lumapak of illegal possession of dangerous drugs and drug paraphernalia, the trial court gave more emphasis on the validity of the search and its effect on the admissibility of the evidence obtained by virtue thereof. It ruled that the prosecution established the propriety of the search undertaken and considered the same valid, thus the evidence obtained therein are admissible. With this admissible evidence against the accused, the trial court concluded that the elements of illegal possession of dangerous and drug paraphernalia were established beyond reasonable doubt, more particularly, that accused Lumapak was in possession of shabu. The trial court also dismissed accused Lumapak's claim that the charges against him were fabricated by reasoning that accused Lumapak failed to establish ill-motives on the part of the officers in the conduct of the search as accused himself admitted that he had no previous altercation with PO3 Bontuyan, his neighbor, that would impel the latter to get back on him.[26]

In his Brief,[27] accused Lumapak mainly argues that the prosecution failed to establish his guilt beyond reasonable doubt because it failed to prove that the police officers followed the chain of custody rule in order to establish the corpus delicti of the crimes charged, thus rendering its evidence against the accused doubtful.

The Office of the Solicitor General (OSG) in its Brief,[28] meanwhile, chiefly contends that the chain of custody was properly proven by the prosecution, and that, assuming there was non-compliance of Section 21 of RA No. 9165, the police officers were able to preserve the integrity and evidentiary value of the seized illegal drugs and paraphernalia.

Accused Lumapak's appeal is impressed with merit.

As can be gleaned from the trial court's decision, the same did not make any finding whether the corpus delicti of the crimes charged were established beyond doubt. It summarily concluded that the elements of the crimes were proven without looking into whether the identity and integrity of the corpus delicti have been preserved.

There is no question that the conduct of the search was by virtue of a valid search warrant. However, it must be noted that the search and seizure was pursuant to an alleged illegal possession of dangerous drugs, thus, proper procedure in accordance with Section 21 of RA No. 9165 should have been complied with. To rule that the search was validly effected without assessing whether there was compliance or, at least, substantial compliance with the legal procedure constitutes a grave error.

The elements of the offense of illegal possession of dangerous drugs, are the following: first, the accused was in possession of an item or object, which is identified to be a prohibited or dangerous drug; second, such possession was not authorized by law; and third, the accused freely and consciously possessed the drug.[29]

It is already a jurisprudential guideline that in the prosecution of illegal possession of dangerous drugs, the dangerous drugs itself constitutes the very corpus delicti of the offense. Hence, it is of paramount importance that the existence of the drug, the corpus delicti of the crime, be established beyond doubt.

To successfully prosecute a case involving illegal drugs, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique

characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. 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; otherwise, the prosecution for illegal possession of dangerous drugs under RA No. 9165 fails.[30]

Thus, to authenticate and establish the identity and integrity of the seized illegal drugs as evidence against the accused, the chain of custody rule comes into play.

The chain of custody rule is a method of authenticating evidence which 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 includes 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. Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused." [31]

Hence, in order to properly effect the chain of custody rule and maintain the identity and integrity of the seized illegal drugs, Section 21 of RA No. 9165 provides:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign to sign the copies of the inventory and be given a copy thereof.

Meanwhile, Section 21(a), Article II of the Implementing Rules and Regulations of RA No. 9165 further provides that "non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow as long as the prosecution can demonstrate that the integrity and evidentiary value of the evidence seized have been preserved."

In view of these provisions and the chain of custody rule, it is thus incumbent upon the prosecution to establish beyond doubt that the proper procedure had been followed in order to maintain the identity and integrity of the seized illegal drugs. And, in case, the procedure was not complied with, it is the prosecution's duty to demonstrate beyond reasonable doubt that certain steps were undertaken to preserve the integrity and evidentiary value of the seized evidence.

Considering that the corpus delicti of the crime of illegal possession of dangerous drugs is the illegal drugs itself, the Supreme Court has consistently pronounced that "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.”[32]

After a thorough evaluation, this Court finds reasonable doubt on the evidence presented by the prosecution to prove an unbroken chain of custody. There exists substantial gaps in the chain of custody making the corpus delicti doubtful.

To prove the chain of custody of the seized illegal drugs, prosecution presented the lone testimony of PO1 Dacalos. A portion of his testimony reads:

“Fiscal Capacio:

Q: What happened when you started the search?

A: We conducted the search together with the tanods and PO2 Gentalian and we (sic) found five (5) pieces of shabu and drug paraphernalia on the second layer of the small table.

xxx

xxx

Q: When you found these items, who were present?

A: The two tanods.

Q: How about the accused?

A: Also the accused.

xxx

xxx

Q: After that, what happened next?

A: We submitted these paraphernalia and the suspected shabu to the recorder.

xxx

xxx

Q: The recorder whom you entrusted the items made an inventory receipt?

A: Yes.

Q: Were you present when it was made?

A: Yes.

Q: If you can recall, was the inventory shown to the accused?

A: Yes.

Q: Did the accused signify or acknowledge that receipt or inventory?

A: He refused to sign the receipt.

xxx

xxx

Q: After that, what happened?

A: After we finished conducting the search, we brought the shabu and paraphernalia to our office.

Court:

Q: What happened?

A: We filed the case and the items we confiscated were submitted to the PNP Crime Laboratory for

examination.

Fiscal Capacio:

Q: These five (5) packs which you found on the second layer of the small table, can you identify these?

A: Yes, because we put a marking on them and we submitted them to the PNP Crime Laboratory for examination.

Q: Who submitted these items?

A: I and PO1 (sic) Leyson.

Q: I am showing to you these five (5) plastic packs, please go over, what relation has these to the ones found on the second layer of the small table?

A: These are the ones.

Q: Considering the lapse of time, why do you say these are the ones, why can you easily identify?

A: We put the markings.

Q: Who put the markings?

A: I and PO2 Leyson.

Q: What are the markings?

A: NL 1 up to 5.

xxx

xxx

Q: You said you were the one who marked and inventoried these five (5) packs and even brought these packs to the PNP Crime Laboratory for examination, have you known the result of the chemical analysis of the five (5) packs? I am showing you this Letter Request, are you familiar with this document?

A: Yes.

Q: Why?

A: This is the paper we submitted.

Q: On the received portion, there is a name delivered by PO2 Leyson? Who is this PO2 Leyson?

A: My companion.

Q: Aside from him, were you also present?

A: Yes.

xxx

xxx

Q: What was the result of the laboratory examination?

A: It was positive of shabu?

Q: How do you know?

A: Because of the chemistry report.

xxx

xxx.”[33]

As can be gleaned from the above testimony, it clearly appears that PO1 Dacalos only mentioned that the illegal drugs they seized were marked by him and PO2 Leyson, but there is no clear showing of the circumstances

surrounding the seizure and marking of these contrabands – whether the same was immediately marked and whether the same was marked in the presence of the accused were left undisclosed.

Jurisprudence has laid down that “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.”[34] As such, it was also ruled that “the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.”[35]

Evidently, the above transcript of PO1 Dacalos' testimony clearly shows a glaring gap in establishing the first link of the chain of custody, the marking. His testimony reveals that when he found the alleged illegal drugs, he gave it to the recorder, who he identified to be PO3 Bontuyan. Without any marking, the alleged illegal drug was transferred to PO3 Bontuyan, and during transit from where the illegal drugs were seized up to the police station, it was not clear who got hold of the same.

Moreover, PO1 Dacalos on cross even admitted that PO3 Bontuyan, the recorder, to whom the former gave the seized drug for inventory did not even witness the actual seizure of the contraband as he was outside the house near the doorstep, viz:

Atty. Talabo:

Q: Therefore considering that you and the barangay tanod were already inside the room, the recorder was not present inside the house of the accused?

A: The recorder was at the door stepped (sic). Since it is small it is very hard to search.

Court:

Q: In other words, he did not enter the house?

A: Yes, sir.

Atty. Talabo:

Q: He did not see what transpired inside the house?

A: Yes, sir.

xxx

xxx.”[36]

Considering that the recorder, PO3 Bontuyan, did not witness where the seized contrabands were found, he would not know their state or condition at the time these were found. When he received the same without any marking, he also would not know if these alleged contrabands were already tampered or substituted before they were given to him, or he would not discover if these would be tampered or substituted while they were being brought to the police station.

Indeed, PO1 Dacalos testified that he and PO2 Leyson marked the illegal drugs, but it was not clearly demonstrated when and where the marking was done. Based on his testimony, the Court can only surmise that the illegal drugs were marked at the police station. As already mentioned, there is no clear evidence on who actually got hold of the alleged contrabands while in transit, and if the marking was done in the police station by PO1 Dacalos and PO2 Leyson, who could have given the contrabands to them? Nowhere in PO1 Dacalos' testimony would reveal how the alleged illegal drugs were transferred back to him for marking. And if this question could not be answered, another one would arise – Was PO1 Dacalos sure that the ones he marked were the ones he

seized? This is another question left hanging.

Further, it is also not established whether the marking was done in the presence of the accused or his representative. There is clearly no attempt from the prosecution to, at least, show that the proper procedure was substantially complied with.

Aside from this failure to immediately mark the seized illegal drugs, there was even no attempt to comply with the photographing requirement of Section 21 of RA No. 9165. Although there was an inventory made, the prosecution failed to propound any justification why the requirement on taking of photographs were not complied with. Also, even though the tanods were admittedly present during the search, there was no showing whether they indeed witnessed what transpired during the search because they were never presented as witnesses.

Finally, another gap in the chain of custody left unexplained is how the the illegal drugs got to the laboratory and examined by the Medical Technologist Jude Daniel Mendoza. It is true that PO1 Dacalos and PO2 Leyson submitted the illegal drugs examination, but the letter-request[37] shows that a certain PO1 Roma received the same from PO2 Leyson. What happened after receipt of PO1 Roma and how the same got to Medical Technologist Mendoza were not shown.

The prosecution presented no other evidence in order to establish the procedure employed in the search to prove proper chain of custody. The lone testimony of PO1 Dacalos is insufficient as it left gaping holes in the links of the chain of custody. The testimony of PO2 Gentalian,[38] who was also presented as witness, does not even lend support to PO1 Dacalos' testimony. PO2 Gentalian only testified that he did not see where PO1 Dacalos recovered the contrabands and that only PO1 Dacalos found the contrabands.

The tanods who acted as witnesses could have shed more light on the procedure followed during the search and could have corroborated the testimony of PO1 Dacalos, but they were never presented in court.

The above noted gaps in the chain of custody indeed created a reasonable doubt on the corpus delicti and also on the guilt of accused Lumapak.

In the fairly recent case of *Lopez v. People*,[39] the Supreme Court held that substantial gap in the chain of custody is created when the prosecution witnesses never recounted which police officer had initial control and custody upon their confiscation and while in transit, to wit:

“There were indeed substantial gaps in the chain of custody from the initial stage with the apparent lack of markings. Upon confiscation of the shabu, the prosecution witnesses never recounted which police officer had initial control and custody upon their confiscation and while in transit. At the police station, nobody witnessed if and how the seized items were marked. SPO4 Bognalos alleged that it was the Chief of Police who forwarded the seized sachets to the crime laboratory, while PO3 Telado intimated that it was the investigator who turned them over to the crime laboratory. Their records were likewise bereft of any detail as to who exercised custody and possession of the seized items after their chemical examination and before they were offered as evidence in court. All these weak links in the chain of custody significantly affected the integrity of the items seized, which in turn, created a reasonable doubt on the guilt of the accused.”

In *Fajardo v. People*,[40] the Supreme Court ruled that marking of the seized drug not in the presence of the accused and not in the scene of the crime creates gaps, which give doubts on the illegal drugs' identity, viz:

“Another phase of the first link to the chain of custody is the marking of seized items. The rule requires that it should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence. Evidently, the marking was not done at the scene of the crime. In fact, PO1 Bernardo testified that it was an investigator of the crime laboratory, whose name he cannot recall, who made the markings. Indeed, PO1 Bernardo could not

explain the actual markings.”

Also in the case of *People v. Alcuizar*,^[41] the Supreme Court ruled that marking of the seized illegal drug in the police station applies generally in cases of warrantless searches and seizures, as such, if the search is pursuant to a search warrant, marking of the illegal drugs in the police station, and not in the scene where it was seized, should be justified, thus:

“xxx While the rule allows marking of evidence to be done in the nearest police station, this contemplates a case of warrantless searches and seizures. In this case, the police officers were able to secure a search warrant prior to their operation. SPO1 Agadier did not offer an explanation or a justification on why he did not immediately mark the plastic packs of shabu seized inside appellant’s house notwithstanding that an inventory receipt was even prepared while the police officers were still inside the house of appellant. They were given sufficient time and opportunity to prepare for its implementation. Thus, failure to comply with the marking of evidence immediately after confiscation constitutes a first gap in the chain of custody.”

Verily, the failure of the police officers, in this case, to mark the dangerous drugs immediately after their seizure in the presence of the accused and the vague testimony of PO1 Dacalos concerning the custody of the illegal drugs from the residence of accused Lumapak up to the time it was submitted to the crime laboratory for examination constitute a glaring and significant gap in the chain of custody which substantially affects the identity of the corpus delicti. Consequently, all these weak links in the chain of custody significantly affected the integrity of the alleged shabu seized, which in turn, created a reasonable doubt on the guilt of the accused Lumapak.

The above finding on the failure to establish the identity and integrity of the dangerous drugs by the prosecution applies the same way to the seized drug paraphernalia. Although, these alleged drug paraphernalia were presented and marked as exhibits during the trial, the links in the chain of custody in order to prove their identity and integrity were not properly established. Same as the alleged shabu seized at the residence of accused Lumapak, these drug paraphernalia were not also immediately marked in the presence of the accused, and no photographs were taken thereof. Also, the custody of the same while in transit was not adequately proven. Hence, the prosecution failed to establish beyond doubt that the integrity and evidentiary value of the seized drug paraphernalia were preserved.

It has also not escaped the Court's attention that the inventory receipt^[42] in the records included a cellphone (Nokia 5210) and a cash amounting to Eleven Thousand Pesos (P11,000.00). However, these were not proven to have been used in the alleged illegal drug transaction nor proven to have been the proceeds of the same. Much less, these were not even submitted as evidence. Hence, it is but fair to order the return of the cellphone and the cash to accused Lumapak.

In light of the above discussion, no weight could be given to the OSG's contention that the credibility of the police officers should be given more weight for they are presumed to have performed their duties in a regular manner. 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.^[43] In this case, considering that the procedure employed by the police officers were tainted with irregularities and material lapses, the same created serious doubts in the corpus delicti of the crimes charged. Because of these irregularities, the presumption of regularity was effectively destroyed. The case of *People v. Salonga*^[44] aptly put:

Finally, the presumption of regularity in the performance of official duty cannot be invoked by the prosecution where the procedure was tainted with material lapses. These lapses effectively produced serious doubts on the integrity and identity of the corpus delicti, especially in the face of allegations of frame-up which was testified to by a third party witness. The presumption of regularity in the performance of official duty cannot by itself

overcome the presumption of innocence nor constitute proof beyond reasonable doubt.

In view of the material lapses in the chain of custody and the failure of the prosecution to adduce justifiable grounds on these lapses, this Court is constrained to reverse the finding of the trial court.

WHEREFORE, the January 28, 2010 Joint Judgment of the Regional Trial Court, Branch 17, Cebu City in Criminal Cases Nos. CBU-70274 and CBU-70275 convicting accused Narciso Lumapak alias Teban of the crimes of illegal possession of dangerous drugs and illegal possession of drug paraphernalia under Sections 11 and 12 of RA No. 9165, is hereby REVERSED and SET ASIDE. Accused-appellant NARCISO LUMAPAK alias TEBAN is declared ACQUITTED of the charges on the ground of reasonable doubt. He is ordered to be immediately RELEASED from detention, unless he is being detained for some other lawful cause.

It is also hereby ORDERED that the one (1) unit of cellular phone (Nokia 5210) and the cash amounting to 11,000.00, which were seized from accused Lumapak, be RETURNED to him. The same cannot be escheated in favor of the government because these are not considered contrabands.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*]Acting Chairperson in lieu of Justice Ramos Paul L. Hernando, per Office Order No. 19-14-GTI dated July 7, 2014.

[1] Records, pp. 118-122.

[2] Records, p. 1.

[3] Records (CEB-70275), p. 1.

[4] TSN dated January 25, 2005.

[5] Joint Affidavit, Records, p. 3.

[6] TSN dated January 25, 2005, pp. 4-5.

[7] TSN dated October 15, 2008, p. 5.

[8] TSN dated January 25, 2005, p. 6.

[9] TSN dated October 15, 2008, p. 5.

[10] TSN dated January 25, 2005, p. 7-8.

[11] Ibid.

[12] Id. pp. 8-9

[13] Records, p. 6 and p. 78.

[14] TSN dated January 25, 2005, p. 10.

[15] TSN dated February 8, 2005, p. 2.

[16] Exhibits Folder, p. 1.

[17] TSN dated October 21, 2009.

- [18] TSN dated December 1, 2009.
- [19] TSN dated October 21, 2009, p. 4.
- [20] TSN dated October 21, 2009, pp. 4-5.
- [21] TSN dated October 21, 2009, p. 5.
- [22] TSN dated October 21, 2009, pp. 5-8.
- [23] TSN dated October 21, 2009, pp. 8-9.
- [24] Records, p. 122.
- [25] Rollo, p. 22.
- [26] See Joint Judgment dated January 28, 2010, Supra, note 1.
- [27] Rollo, pp. 22-33.
- [28] Rollo, pp. 69-82.
- [29] Valencia v. People, G.R. No. 198804, January 22, 2014.
- [30] Ibid, citing Fajardo v. People, G.R. No. 185460, July 25, 2012 and People v. Alcuizar, G.R. No. 189980, April 6, 2011.
- [31] Lopez v. People, G.R. No. 188653, January 29, 2014 citing Lopez v. People, G.R. No. 184037 and Catuiran v. People, G.R. No. 175647, 8 May 2009.
- [32] People of the Philippines v. Salonga, G.R. No. 194948, September 2, 2013; emphasis supplied.
- [33] TSN dated January 25, 2005, pp. 7-12.
- [34] People v. Sabdula, G.R. No. 184758, April 21, 2014 citing People v. Alejandro, G.R. No. 176350, August 10, 2011 .
- [35] People v. Gonzales, G.R. No. 182417, April 3, 2013.
- [36] TSN dated February 8, 2005, p. 10.
- [37] Exhibits Folder, p. 2.
- [38] TSN dated October 15, 2008.
- [39] G.R. No. 188653, January 29, 2014.
- [40] G.R. No. 185460, July 25, 2012.
- [41] G.R. No. 189980, April 6, 2011.
- [42] Records, p. 78.
- [43] Lopez v. People, G.R. No. 188653, January 29, 2014, citing People v. Umipang, G.R. No. 190321, 25 April 2012 and San Juan v. People, G.R. No. 177191, 30 May 2011.
- [44] G.R.194948, September 2, 2013.

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