

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROCHE TULLO Y ARROJADO, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

This is an appeal filed by accused-appellant Roche Arrojado Tulllo of the Decision[1] dated November 25, 2010, of the Regional Trial Court, 6[th] Judicial Region, Branch 16, Roxas City, in Crim. Case No. C-329-05 finding accused-appellant guilty of Violation of Sec. 5, Article II of RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE FACTS

Version of the Prosecution

The Anti-Illegal Drug Operation Team of the Philippine National Police of Roxas City was tasked to monitor and track down illegal activities of persons engaged in illegal drug trade within their area of responsibility. The team members included PO3 Rizalde Alba, PO1 Rodel Ibanez, SPO1 Robenesto Castro, PO3 Ernesto Bautista, Jr., PO2 Domingo Acepcion, SPO2 Antonio Besana and PO1 Jose Dexter Paulin with Police Inspector Nonato Daradar as their team leader.

Two weeks before December 19, 2005, the team conducted a surveillance on accused-appellant. It was confirmed that he was engaged in the sale of illegal drugs.

On December 19, 2005, the team conducted a buy-bust operation against accused-appellant. In the briefing, PO1 Ibanez was designated as poseur-buyer by their team leader and it was agreed that he would be assisted by a police asset who knew accused-appellant. SPO2 Antonio Besana was assigned as evidence custodian/investigator while the other members were constituted as back-up. SPO1 Castro prepared the P500.00 bill with serial number NFO77032 to be used as buy-bust money and was recorded in the police blotter book at the police station. SPO1 Castro then turned over the marked money to PO1 Ibanez. The team members agreed that the pre-arranged signal would be for PO1 Ibanez to give a “missed call” to PO3 Bautista to signify that the sale had been consummated.

Around 8:00 PM on the same day, the team members left the station. PO1 Ibanez and the police asset left together on board a motorcycle. SPO1 Castro, PO3 Bautista, PO3 Alba, PO2 Paulin and PO2 Acepcion proceeded to the target area using a separate vehicle. They alighted in the area near Mabini corner San Roque Street where accused-appellant resides. The back up force positioned themselves strategically within one (100) hundred meters more or less from accused-appellant's residence.

PO1 Ibanez and the civilian asset parked the motorcycle about two meters away from accused-appellant's house. The asset then proceeded to accused-appellant's house and called him out. An old woman appeared from a store fronting accused-appellant's house and told the asset that accused-appellant was inside. Accused-appellant

emerged shortly thereafter at the terrace of the second floor of the house. The asset asked: “Che, do you have?”. Accused-appellant nodded in response and motioned for him to wait outside a bit farther from his house. The asset was led to a dilapidated uninhabited house along Mabini Street. PO1 Ibanez and the asset waited for accused-appellant and after a few minutes, accused-appellant arrived shirtless and wearing only shorts. The civilian asset said to accused-appellant: “Pre, we will buy.” and accused-appellant replied: “How much?”. The asset said “ken yen” or P500.00. Accused-appellant then led them into a room inside the house wherein he lit a candle and sat down facing PO1 Ibanez and the asset. PO1 Ibanez told accused-appellant that he wanted to buy shabu worth P500.00. Accused-appellant took something from the side of his shorts and handed it to PO1 Ibanez who examined its contents and paid P500.00 to accused-appellant. At that point, PO1 Ibanez announced the buy-bust and placed accused-appellant under arrest. While arresting accused-appellant, PO1 Ibanez gave PO3 Bautista a “missed call”.

Subsequently, the back up force arrived and the police officers assisted PO1 Ibanez in arresting accused-appellant. At that time, the sachet was already in the hands of PO1 Ibanez. PO3 Bautista informed accused-appellant of his constitutional rights as other team members arrived. PO3 Alba frisked accused-appellant and recovered from his left palm the P500.00 marked money. Later, PO1 Ibanez marked the seized sachet with accused-appellant's initials “RT-1”. PO1 Ibanez turned over the subject sachet to SPO2 Besana, then left the scene to take the asset home. SPO2 Besana placed the sachet containing suspected shabu inside a big transparent plastic bag where he wrote the details of the operation. PO3 Alba turned over the P500.00 marked money to SPO2 Besana who prepared a written inventory of the recovered items. P/Insp. Daradar signed the inventory witnessed by SPO1 Castro, PO3 Bautista, PO2 Acepcion and PO1 Paulin. Accused-appellant refused to sign the certificate of inventory. Accused-appellant was then brought to the Roxas City PNP Station where he was booked and detained for illegal sale of drugs. SPO2 Antonio Besana prepared a Spot Report for the PDEA and a letter request for forensic examination of the subject specimen to the crime laboratory which was signed by P/Supt. Domingo Cabillan of the Roxas City Police Station. SPO2 Besana kept the items turned over to him in a steel cabinet at the police station. The next day, on December 20, 2005, the pertinent documents together with the specimen were brought by PO1 Ibanez to the PDEA and PNP Crime Laboratory in Camp Martin Delgado, Iloilo City.

P/Supt. Rea Villavicencio, the forensic chemist assigned at the PNP Crime Laboratory conducted an examination on the subject specimen attached to the formal written request submitted by PO1 Ibanez. After conducting a qualitative examination of the specimen submitted, P/Supt. Villavicencio found the same to be positive for Methamphetamine Hydrochloride, a dangerous drug in Chemistry Report[2] No. D-370-05.

The Charge

In the Information[3] dated December 28, 2005 filed against accused-appellant, he was charged with the crime of Violation of Section 5, Article II of RA No. 9165 as follows:

“That on or about the 19[th] day of December 2005, in the City of Roxas City Philippines and within the jurisdiction of this Honorable Court, said accused with deliberate intent and without any justifiable motive did then and there willfully unlawfully and feloniously sell, distribute and deliver to PO1 RODEL A. IBANEZ (a PNP poseur buyer) one (1) heat sealed transparent plastic packet of methamphetamine hydrochloride or shabu weighing .052 grams, a dangerous drug without the authority to sell and distribute the same.

CONTRARY TO LAW.”

On April 6, 2006, accused-appellant was arraigned and pleaded “not guilty” to the crime charged.

Trial ensued. The prosecution presented the following as witnesses: P/Supt. Rea Villavicencio, PO1 Rodel Ibanez, SPO1 Robenesto Castro, PO3 Rizalde Alba, and SPO2 Antonio Besana. On the other hand, only

accused-appellant testified in his defense.

Version of Accused-appellant

Accused-appellant claims that around 9:30 PM on December 19, 2005, he was at his house at San Roque Street, Roxas City when he heard someone calling out his name. He peeped through the window and saw his friend Romy who told him that something had happened to his younger brother. He went down to meet Romy who was with a companion he was not familiar with. Romy made a motion for them to go to his old house along Mabini Street which was uninhabited. Upon reaching said place, accused-appellant was told that they were “going to a place there what they have brought for me (sic).” Accused-appellant got angry because what they told him did not make sense. He took two steps backward and at that moment, two motorcycles arrived driven by Bing Castro and the late Dodong Alba. Accused-appellant knew the two of them because Bing Castro was his Aunt's bodyguard at Barangay Libas while the late Dodong Alba was his neighbor at Mejorada Subdivision. The latter then announced a buy-bust operation and handcuffed him while Romy and his companion ran away. Accused-appellant was frisked by Dodong Alba who recovered from his right pants pocket a P500.00 bill.

Subsequently, a white automobile arrived and he was pushed inside despite his request to get a shirt. He was taken to the police station and at the investigation room, a policeman named Israel asked him where the half kilo of shabu was. He replied that he did not know what he was talking about so that Israel boxed him, hitting the right side of his body below the breast. Israel used a ladle stick and asked him again about the half kilo of shabu. Israel shoved him when he replied that he had no knowledge about it. He was asked four more times and after each of his denial, he was hit by Israel. When Bing Castro arrived, he was placed inside a bigger cell. Accused-appellant asked for his wife, grandfather and younger brother.

His wife and grandfather arrived and while they were conferring, Israel approached them and offered: “If you have P20,000.00, you will be free.” Accused-appellant told Israel to wait until the following day. Around 10:30 AM the next day, accused-appellant's wife arrived bringing with her P15,000.00 and she was told by Israel to go to the office with him. Accused-appellant heard a commotion and his wife's voice asking for help. Accused-appellant surmised that Israel got angry with his wife because she failed to bring the full amount of P20,000.00. Israel and his companion then filed a case against his wife. He denied that the shabu came from him as well as the P500.00 marked money. Accused-appellant confirmed that PO1 Ibanez was the companion of Romy on the date in question. He had known Romy for two years but he could not tell the court his family name. Accused-appellant did not bother having his physical injuries recorded in the police blotter nor did he file a case for extortion against the police officers.

THE RTC RULING

Thereafter, on November 25, 2010, the RTC, Branch 16, Roxas City rendered a Decision[4] against accused-appellant, the pertinent portion of which reads:

“WHEREFORE, accused ROCHE TULLO y ARROJADO is found guilty beyond reasonable doubt of the crime charged in the Information and is sentenced to life imprisonment , and to pay a fine of P500,000.00 and the costs of this suit.

He shall be credited with the full term of his detention period.

The contraband shall be turned over to the Philippine Drug Enforcement Agency.

SO ORDERED.”

Accused-appellant filed a Motion for reconsideration which was denied in an Order[5] dated February 3, 2011.

On March 5, 2011, accused-appellant filed a Notice[6] of Appeal dated February 28, 2011 which was denied in an Order dated March 22, 2011 for having been filed beyond the reglementary period.

On April 11, 2011, accused-appellant filed a Motion for reconsideration. Meanwhile, an Entry[7] of Judgment dated March 23, 2011 was received by accused-appellant on April 13, 2011, declaring the RTC Decision dated November 25, 2010 as final and executory on February 17, 2011.

Dismayed, accused-appellant filed a Petition for Certiorari with the Court of Appeals imputing grave abuse of discretion on public respondent judge when he denied his right to appeal the assailed Decision. An Entry of Judgment was made even before accused-appellant could seek a reconsideration of the Order denying due course his right to appeal.

In a Decision[8] dated September 28, 2012, the Court of Appeals granted his petition and allowed his appeal. Hence, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning as sole error, to wit:

“THE LOWER COURT ERRED IN FINDING SUFFICIENT EVIDENCE IN HOLDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.”

THIS COURT'S RULING

The appeal is impressed with merit.

Prefatorily, although the court a quo's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[9]

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

In *People vs. Casimiro*, GR No. 146277, June 20, 2002, the Supreme Court acquitted accused-appellant for failure of the prosecution to establish the identity of the prohibited drug which constitutes the corpus delicti. In *People vs. Mapa*, GR No. 91014, March 31, 1993, the accused-appellant was granted an acquittal after the prosecution failed to clarify whether the specimen submitted to the NBI for laboratory examination was the same one allegedly taken from the accused. In *People vs. Dismuke*, GR No. 108453, July 11, 1994, the Supreme Court ruled that the failure to prove that the specimen of marijuana examined by the forensic chemist was that seized from the accused was fatal to the prosecution's case. In *People vs. Laxa*, GR No. 138501, July 20, 2001, the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the accused-appellant. It was held that this deviation from the standard procedure in the anti-narcotics operations produces doubts as to the origins of the marijuana. This question gives rise to surmises and speculations, and cannot prove beyond reasonable doubt the guilt of accused-appellant.

Too, in *People vs. Partoza*, GR No. 182418, May 8, 2009, the Supreme Court elucidated on the importance of proving the corpus delicti of the offense, enumerating several cases wherein the court favored an acquittal because of failure to prove the corpus delicti, viz:

xxx xxx xxx

In *People v. Obmiranis*, appellant was acquitted due to the flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from appellant, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibit before it was offered in evidence in court. In

Bondad v. People, this Court held that the failure to comply with the requirements of the law compromised the identity of the items seized, which is the corpus delicti of each of the crimes charged against appellant, hence his acquittal is in order. And in People v. de la Cruz, the apprehending team's omission to observe the procedure outlined by R.A. No. 9165 in the custody and disposition of the seized drugs significantly impairs the prosecution's case.

In a prosecution for illegal sale of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place; and (2) presentation in court of the corpus delicti or the illicit drug as evidence.[10] It must be stressed that the existence of dangerous drugs is a condition sine qua non for conviction for the illegal sale of dangerous drugs, it being the very corpus delicti of the crime.[11] Central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from accused-appellant. Hence, this Court adopts the chain of custody rule.

Chain of Custody

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[12]

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same, there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing.[13] Thus, the corpus delicti should be identified with unwavering exactitude.[14] To stress, in order to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.[15]

Accused-appellant in the instant case was allegedly caught selling shabu in a buy bust operation conducted by police operatives. A buy-bust operation is a form of entrapment employed by peace officers to apprehend prohibited drug law violators in the act of committing a drug-related offense.[16] Because of the built-in danger for abuse that a buy-bust operation carries, it is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of people under criminal investigation[17] and of the accused facing a criminal charge[18] are safeguarded. The High Court expressed this concern in People v. Tan, G.R. No. 133001, December 14, 2000, when it was recognized that by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

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

(1)

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

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

(a)

The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[19]

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

- The identity of the corpus delict, shabu, was not established in accordance with RA No. 9165.
- No inventory in the crime scene immediately after seizure and confiscation of the alleged confiscated shabu was made by the police officer who had initial custody thereof.
- The evidence custodian did not issue any acknowledgment receipt of the supposed turn-over of the confiscated shabu.
- No photographs of the suspected shabu were taken, not in the presence of accused-appellant or his counsel or the persons from whom said item was confiscated or his representative or counsel from the media and the DOJ or any elected public official.
- No quantitative examination was conducted in violation of the mandatory rule requiring the submission to the PDEA Forensic Laboratory for a qualitative and quantitative examination of the seized article
- the guidelines for drug disposition essential to preserve the identity of the corpus delicti were not followed since the confiscated shabu was left by the evidence custodian overnight at the Police Station and retrieved only the next morning and delivered to the PNP Crime Lab by yet another person.
- There was an irregular procedure followed in handling the supposed marked money.
- The entrapment was made in total disregard of the constitutional and legal safeguards considering the

circumstances before, during and after the arrest of accused-appellant and the confiscation of the alleged shabu.

- None of the team members were specially trained and competent drug enforcement personnel.
- No pre-operation report of the supposed buy-bust operation was made or presented in court.
- The steps allegedly taken before, during, and after the conduct of the operations were not documented and properly authenticated.
- No after operations report was made.
- The alleged confiscated drugs and marked money were not handled in accordance with the DEP Center Memorandum on Procedures in the custody of seized drugs.
- Not all members of the team were given a clear and doable task nor were they prepared to testify on their actual participation therein.
- No extensive surveillance was made before the actual buy bust.
- All the team members are required to observe the transaction between the suspect and the poseur-buyer but only the poseur-buyer and unknown informant observed the transaction.
- The one who conducted the body search for the recovery of the marked money was not the arresting element.
- The arresting element did not apprise accused- appellant of her constitutional rights or the so-called Miranda doctrine.
- No detailed receipt of the confiscated shabu was issued to accused-appellant.
- The date, time and place where the shabu was confiscated were not indicated on the seized sachet of shabu and on the marked money. (Emphasis ours)

The records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure despite its mandatory terms. This Court finds that the prosecution failed to clearly establish the chain of custody of the seized plastic sachet containing shabu subject of the alleged sale. PO1 Rodel Ibanez and PO2 Antonio Besana, the key prosecution witnesses did not adequately explain how the corpus delicti transferred hands from the time it was supposedly confiscated from accused-appellant to the time it was presented in court as evidence. They have not satisfactorily shown that there was no gap in the chain of custody of the seized shabu when it changed hands.

Vital links in the chain of custody

The first link in the chain of custody starts with the seizure of the plastic sachet from accused-appellant. PO1 Ibanez mentioned that he placed his initials "RT" on the confiscated sachet after apprehending accused-appellant. Notably, this testimony constituted the totality of the prosecution's evidence on the marking of the seized evidence. PO1 Ibanez's testimony lacked specifics on how he marked the sachet and who witnessed the marking. In *People v. Martinez*, G.R. No. 191366, December 13, 2010, the High Court ruled that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation. In the present case, nothing in the records gives us a clear insight on the manner and circumstances that attended the marking of the confiscated sachet. Whether the marking had been done immediately in the presence of accused-appellant is not at all clear from PO1 Ibanez's testimony that merely glossed over his attestation that the evidence had been marked after accused-appellant's arrest.

The second link in the chain of custody is its turnover of the seized shabu from PO1 Ibanez to the evidence custodian, SPO2 Antonio Besana. However, it should be pointed out that in handing over to SPO2 Besana the confiscated sachet, there was no acknowledgment receipt thereof. PO1 Ibanez testified in this wise:

“Q:

When you turned over this sachet of suspected shabu to evidence custodian Besana, did he acknowledge receipt thereof in writing

A:

No sir.”[20]

There was no clear narration either as to what time SPO2 Besana arrived at the scene. It appears that SPO2 Besana came into the picture only after the arrest of accused-appellant. PO Ibanez attested thus:

“Q:

When did SPO2 Besana arrive (sic) was it during the actual transaction between you and Roche Tullo or after you put the accused under arrest?

A:

After I arrested the accused Maam.”[21]

The records do not show that SPO2 Besana saw the markings made by PO1 Ibanez in the presence of accused-appellant. Nor do the records show that he witnessed the consummation of the sale or that he saw PO1 Ibanez confiscate the alleged drug from accused-appellant. PO1 Ibanez went ahead with the asset to take him home while SPO2 Besana proceeded to the police station with the accused-appellant and the confiscated sachet. Thus, the person who had control and possession of the seized drug at the time of its transportation to the police station was SPO2 Besana. In the absence of clear evidence, we cannot presume that SPO2 Besana handled the seized sachet — to the exclusion of others — during its transfer from the place of arrest and confiscation to the police station. PO1 Ibanez attested, as follows:

“Q:

Now do you know what was done to the one sachet of shabu subject of the buy bust operation after the arrest of the accused, Mr. witness?

A:

I dont know what was done to that one sachet of shabu after I turned-over it to the evidence custodian Maam.”[22]

The prosecution likewise failed to present proof pertaining to the identity of the duty desk officer of the police station who received the plastic sachet containing shabu from the buy-bust team. This is particularly significant since the seized specimen was turned over to the PNP Crime Laboratory the following day and not immediately after its seizure on the same day. It was not, therefore, clear who had temporary custody of the seized item during this significant intervening period of time. Although the records show that the request for laboratory examination of the seized plastic sachet was prepared by SPO2 Besana, the evidence does not pinpoint who received the marked plastic sachet when it was brought to the police station.

This Court points out that while SPO2 Besana admitted that he prepared the inventory of the seized drugs, he

himself did not sign the same to attest as to the truth of its confiscation. SPO2 Besana categorically declared during trial that:

“Q:

After all these items were turned over to you by PO3 Alba and PO1 Ibanez, what did you do to these items, Mr witness?

A:

I made an inventory of said items and reduced it to writing. Then I prepared other documents for the filing of a case in court, Maam.

Q:

Showing to you Exhibit “G”, page 10 of the record, what is the relation of this exhibit to your testimony.

A:

This is the certificate of inventory that I made during the conduct the conduct of said buy-bust operation, Maam.

Q:

Who signed this certification of inventory, Mr. witness?

A:

Our team leader Police Inspector Nonato Darador and the other members of the raiding team namely: SPO1 Robenesto Castro, PO2 Domingo Acepcion Jr., PO3 Ernesto Bautista and PO2 Jose Dexter Paulin.”[23]

In short, SPO2 Besana prepared the inventory but other police operatives in the persons of SPO1 Robenesto Castro, PO3 Ernesto Bautista, PO2 Domingo Acercion, and PO2 Joel Dexter Paulin signed the Certificate[24] of Inventory. Such an irregularity in procedure was not explained by SPO2 Besana. He failed to justify why he who prepared the same did not sign the inventory.

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

As for the subsequent links in the chain of custody, the records show that SPO2 Besana brought the alleged shabu to the Police Station and kept it in the steel cabinet overnight. No mention was made that such seized shabu was received by the desk officer at the police station. Another glaring error of the police operatives pertains to the transfer of the seized drugs to the Crime Laboratory for examination. Although it was SPO2 Antonio Besana who left the confiscated shabu at the steel cabinet in the PNP office overnight, it was already PO1 Ibanez who came back for it the next morning at 11:00 AM. SPO2 Besana attested, as follows:

“Q:

Now you said that the specimen was submitted to the crime laboratory on the following day, December 20, 2005, from the time the specimen was turned over to you by PO1 Rodel Ibanez up to the time was brought to the crime laboratory, who was in custody of said specimen, Mr witness?

A:

I myself maam.

Q:

Where did you keep said specimen Mr. witness?

A:

Inside a steel cabinet at the police station containing our evidence maam.

Q:

Aside from you, were there other persons who had access of said cabinet?

A:

Yes mam, the evidence custodian of the police station.

Q:

Who was the evidence custodian of the PNP Roxas City, Mr. witness?

A:

SPO1 Emilio Lara.

Q:

And, when did you turn over the specimen to PO1 Rodel Ibanez to be brought to the crime laboratory Mr. witness?

A:

In the early morning of December 20, 2005, Maam.”[25]

It can be gleaned from this particular testimony of SPO2 Besana that there was another person who had access to the steel cabinet other than himself which casts serious doubt as to the identity of the corpus delicti of the offense. We cannot discount even the smallest possibility that other persons besides SPO2 Besana had access to the cabinet and tampered with the evidence inside during this intermittent period pending its delivery to the crime laboratory.

Another crucial link in the chain of custody pertains to transfer of the seized drugs from the police station to the Crime Laboratory for examination. The records reveal that PO1 Ibanez brought the confiscated shabu to the PNP Crime Laboratory at 11:00 AM, the following day. There is no proof in the records of the name of the officer or personnel of the crime laboratory who received the specimen. Likewise, the person from whom PO1 Ibanez received the seized illegal drug for transfer to the crime laboratory was not even identified. As earlier discussed, the identity of the duty desk officer who received the shabu, as well as the person who had temporary custody of the seized items overnight, had not been established. Thus, there is another gap in the chain of custody. P/Supt Rea Villavicencio merely testified that she conducted an examination on the specimen which tested positive for methamphetamine hydrochloride. Her testimony is bereft of proof that the seized shabu was properly kept and safeguarded pending its presentation in court. That the prosecution offered in evidence the request for laboratory examination as well as the Chemistry Report has no bearing on the question of whether the specimen submitted for chemical analysis and subsequently presented in court was the same as that seized from the accused-appellant. All that these exhibits proved were the existence and authenticity of the request for laboratory examination and the results of this examination, not the required chain of custody from the time of seizure of the evidence.

Otherwise stated, the identity of the person who had the custody and safekeeping of the drugs after its examination by P/Supt Villavicencio pending presentation in court is missing which creates a missing link in the chain of custody.

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

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

In relation thereto, in Malillin v. People, G.R. No. 172953, April 30, 2008, the Supreme Court explained that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it is offered in evidence, in such a way that every person who touched it would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The procedural lapses mentioned above show the glaring gaps in the chain of custody, creating a reasonable doubt whether the drugs confiscated from the accused-appellant were the same drugs that were brought to the crime laboratory for chemical analysis, and eventually offered in court as evidence. In the absence of concrete evidence on the illegal drugs bought and sold, the body of the crime — the corpus delicti — has not been adequately proven.[26] Evidently, the prosecution has not proven the indispensable element of corpus delicti of the crime which failure produces grave doubt as to the guilt of the accused-appellant. In criminal cases, proof beyond reasonable doubt is required to establish the guilt of the accused. Similarly, in establishing the corpus delicti, that unwavering exactitude is necessary. Every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

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

We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. For this reason, the last sentence of the implementing rules provides that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." Accordingly, noncompliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. These lapses, however, must be recognized and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.[27]

In People v. Pringas,[28] the Supreme Court reiterated that: "what is of utmost importance is the preservation of

the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.” In this case, the integrity and the evidentiary value of the items involved were not safeguarded. The prosecution did not bother to offer any explanation to justify the failure of the police officers to comply with the mandatory procedures under Section 21. Specifically, there was no justification for the omission to take photographs of the seized drugs when there was ample time to do so considering this was a buy bust. In *People vs. Morales*, GR No. 172873, March 19, 2010, the Supreme Court held that failure to comply with this particular rule without any justification for said omission warrants the acquittal of the accused. Then again, the apprehending team failed to show why the proper signing of the receipt of inventory by the one who prepared the same had not been made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). There was no explanation why the Certificate of inventory prepared by SPO2 Besana was signed by other persons who did not prepare the same. We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. In other words, the justifiable grounds for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist. Here, there were indeed lamentable lapses committed by police officers which were not explained by them.

Presumption of Regularity in the performance of official duties

The records show that the trial court heavily relied on the testimonies of PO1 Ibanez and SPO2 Besana and therefore banked on the presumption of regularity in the performance of official duty a police officer enjoys in the absence of any taint of irregularity and of ill motive that would induce him to falsify his testimony. Admittedly, the defense did not adduce any evidence showing that the police officers had any motive to falsify. The regularity of the performance of their duties, however, leave much to be desired given the lapses in their handling of the allegedly confiscated drugs as heretofore shown. An effect of this lapse, as the High Court held in *Lopez v. People*, G.R. No. 172953, April 30, 2008 is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no if's and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence. *People v. Santos*, G.R. No. 175593, October 17, 2007, instructively tells us that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. Consequently then, the overwhelming misdemeanors of the police officers in the conduct of the buy-bust operation and the missing links in the corpus delicti of the offense warrant the acquittal of accused-appellant.

Other irregularities pertaining to the conduct of the buy bust operation

Accused-appellant also harps on the mishandling of the marked money by the police officers in violation of the mandatory and strict procedures in buy bust operations. He contends that there was a discrepancy in their testimonies as to who handled the marked money after it was allegedly confiscated from accused-appellant. Accused-appellant points out that SPO1 Robenesto Castro testified that PO3 Rizaldy Alba told him that the money was only turned over to him. PO1 Ibanez testified that PO3 Alba recovered it from accused-appellant when he was searched during his arrest.

Further, accused-appellant submits that his entrapment was made in total disregard of the constitutional and legal safeguards from the time of his arrest until he was detained in the police station. He insists that there were blatant violations of the rules in the conduct of the buy bust operation, such as the failure to file pre-operation and post-operation reports, absence of intensive surveillance on accused-appellant and the non-dusting of the marked money with ultra-violet powder.

For another, accused-appellant posits that a reading of the Chemistry Report reveals that there was no quantitative examination that was conducted nor did the Forensic Chemist testify that a representative sample for examination was obtained by mixing, conning and quartering as required by the Universal Method of Drug Analysis used by the PNP, Philippine Drug Enforcement Agency and the NBI.

We have taken into consideration these irregularities propounded by accused-appellant. However, it should be borne in mind that in illegal sale of dangerous drugs, what is important is the fact that the poseur-buyer received shabu from the accused-appellant and the same was presented as evidence in court. The non-presentation of the marked money does not create a hiatus in the evidence for the prosecution as long as the sale of the illegal drugs is adequately established and the substance itself is presented before the court.[29] Anent the failure to submit a pre-operation and post operation reports to the PDEA pertaining to the conduct of the buy bust operation, there are no provisions either in Republic Act No. 9165 or its Implementing Rules and Regulations requiring these to be indispensable to prove the illegal sale of shabu.

Hence, accused-appellant's assertions regarding the mishandling of the marked money and the absence of pre-operation and post operations reports of the buy bust as well as the non-dusting of the marked money of ultra-violet powder do not affect or in any way diminish the authenticity of the buy-bust operation. These, after all, are not part of the elements of the aforesaid offense. And, as can be observed, the implementing rules offer some flexibility when a proviso added that non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.[30]

Regardless however of these immaterial irregularities in the conduct of the buy-bust operation, accused-appellant's acquittal must stand in view of the substantial gaps in the chain of custody of the seized drugs discussed earlier, creating serious doubt as to the corpus delicti of the offense. Apropos in Salonga,[31] the Supreme Court, citing *People vs. Guzman*,[32] elucidated, that:

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

A final word

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:

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 November 25, 2010, of the Regional Trial Court,

6[th] Judicial Region, Branch 16, Roxas, City in Crim. Case No. C-329-05 is REVERSED and SET ASIDE. Accused-appellant Roche Arrojado Tullo is ACQUITTED on reasonable doubt. Let a copy of this Decision be furnished the City Warden, BJMP, Barangay San Jose, Roxas City who is ORDERED to cause the immediate release of accused-appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken within five (5) days from notice.

SO ORDERED.

Delos Santos,[*] and Francisco, JJ., concur.

[*]Acting 3rd member vice Justice P.A. A. Maxino who inhibited, per Raffle Results dated July 10, 2014.

[1] Rollo, p. 65

[2] Rollo, p. 172

[3] Records, p. 1

[4] Rollo, p. 65

[5] Rollo, p. 75.

[6] Rollo, p. 145.

[7] Rollo, p. 157.

[8] Rollo, p. 160, Justice, Pamela Ann Abella Maxino, ponente.

[9] People v. Pedronan, G.R. No. 148668, June 17, 2003, 404 SCRA 183, 188.

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

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

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

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

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

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

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

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

[18] Article III (Bill of Rights), Section 14 (2) of the 1987 Constitution reads: In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and production of evidence in his behalf. However, after arraignment, trial may proceed

notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. See also: Rule 115 (Rights of the Accused), Revised Rules of Court.

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

[20] TSN, November 23, 2006, p. 39.

[21] TSN, November 23, 2006, p. 39.

[22] TSN, November 23, 2006, p. 22.

[23] TSN, September 4, 2007.

[24] Folder of Exhibits p. 10.

[25] TSN September 4, 2007, p. 12.

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

[27] People vs. Habana, G.R. No. 188900, March 5, 2010.

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

[29] People vs. Beriarmente G.R. No. 137612 September 25, 2001.

[30] People v. Manlangit, People v. Gaspar, G.R. No. 192816, 6 July 2011.

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

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

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

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