

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR SANCHEZ Y ESPIRITU, ACCUSED-APPELLANT.

G.R. No. 175832. October 15, 2008

Ponente: BRION, J.

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BRION, J.:

This case confronts us once more with the buy-bust of a prohibited drug and the procedural difficulties this type of operation poses for the police as well as for the prosecution.

On appeal is the September 11, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01095. The CA affirmed the April 14, 2005 Decision[2] of the Regional Trial Court (RTC), Branch 103, Quezon City, that found the accused-appellant Salvador Sanchez y Espiritu (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002), meriting him the penalty of life imprisonment.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with violation of Section 5, Article II of R.A. No. 9165 under an Information that states:

x x x

That on or about the 6[th] day of April 2003 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero two (0.02) grams of white crystalline substance containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[3]

The appellant pleaded not guilty to the charge.[4] The prosecution presented its lone witness - SPO2 Levi Sevilla (SPO2 Sevilla) - in the trial on the merits that followed. The appellant and his witness, Nida Detera (Nida), took the stand for the defense.

The RTC summarized the material points of the testimony of SPO2 Sevilla as follows:

x x x while he was on Station 3 duty at Talipapa, Novaliches, Quezon City on April 6, 2003 a confidential informant arrived at around 4:30 noon and reported that there is a person who has been selling shabu. An entrapment team was formed consisting of himself as poseur buyer, SPO1 Brigido An, PO3 Virgilio Bernardo, PO2 Manny Paulilis and PO1 Cecil Collado. A pre-operational report was submitted of the undertaking. At 5:00 p.m., the team was dispatched to the target area - at the far end Lualhati Street, Manotok Subd., Baesa, Quezon City. PO Sevilla put his initial "LS" on the money given to him to be used at the entrapment.[5]

At the place, which is a squatter's colony located at the edge or side of Lualhati St., PO Sevilla and his

informant walked towards the place pointed by the informant and met the drug pusher. The informant introduced PO Sevilla to the pusher. The informant and the pusher talked for a while. Thereafter, PO Sevilla talked to the latter. He told him that he badly needs shabu para pumayat. x x x PO Sevilla then gave the pusher P100.00 (the marked money) and in return the pusher gave him a plastic sachet of shabu.[6]

After receiving the plastic sachet, PO Sevilla scratched his head as a pre-arranged signal to his colleagues who were deployed nearby. Said other policemen rushed to the crime scene while PO Sevilla grabbed the right hand of the accused and introduced himself as a cop. The accused was frisked and PO Sevilla recovered the P100.00 marked money bill (Exh. G) in the right side pants pocket of the accused who was later brought to Station 3. PO Sevilla identified the transparent plastic sachet on which he placed his initial "LS" and the initial "SS" of the accused (Exh. E).[7]

On cross examination, PO Sevilla reiterated his testimony adding that whenever he is tasked as a poseur buyer he always gives as reason that he wanted to be thinner and drug pushers never questioned him about that. PO Sevilla, who was wearing a crew cut in court said that when he bought shabu from the accused his hair style was different. It was his first time to entrap at that place as a poseur buyer. Their marked Anfra van was parked along Quirino Highway, Quezon City from where he and the informant walked to Lualhati Street for about 10 minutes as the target scene was about 100 meters away. He reiterated that their Pre-op Report was sent to PDEA and given a control number.[8] [Italics and footnotes referring to the pertinent parts of the records supplied]

The RTC dispensed with the testimony of Forensic Chemist John Paul Puentespina after the parties stipulated that "the items allegedly confiscated from the accused were submitted to the crime laboratory for examination and the findings were put into writing." [9]

In the hearing of December 4, 2003, the prosecution offered the following as exhibits:

Exhibit "A" - the request for laboratory examination of the specimen confiscated from the appellant;

Exhibit "B" - the Initial Laboratory Report prepared by Forensic Chemist Paul Jerome Puentespina;

Exhibit "C" - the Confirmatory or Final Chemistry Report No. D-366-03 prepared by Forensic Chemist Paul Jerome Puentespina;

Exhibit "D" - sworn Certification to show that the Chemistry Report was subscribed and sworn to before an Administering Officer;

Exhibits "E", "E-1" and "E-2" - the specimen taken from the appellant; the initials of Forensic Chemist Puentespina; and the initials of the police officer who arrested the accused and who received the specimen in exchange for the buy bust money, respectively;

Exhibit "F" - the brown envelope where the seized evidence was placed after it was examined by Forensic Chemist Puentespina;

Exhibits "G" and "G-1" - the buy bust money and the initials written therein of the poseur buyer, respectively;

Exhibits "H" and "H-1" - the Joint Affidavit of the entrapment team and the signature therein by SPO2 Sevilla, respectively.

The defense objected to Exhibits "E," "E-1," "E-2," "G" and "H," contending that the appellant "had nothing to do with the specimen presented before the court," and that the confiscated specimen resulted from an illegal arrest. On Exhibit "G," the defense argued that no evidence of powder was ever presented by the prosecution witness. The defense likewise objected to the presentation of Exhibit "H" on the ground that its contents were self-serving.

The appellant gave a different version of the events in his testimony of January 30, 2005. He narrated that at

around 5:25 in the afternoon of April 6, 2003, he was in his house putting his children to sleep when three (3) police officers suddenly barged into his house, searched the premises, frisked him, and forced him to come with them.[10] He recognized one of the policemen as "Sir Levi," a former colleague of his uncle, Sonny Catiis, at the police station. The police officers then handcuffed him and asked him to get into a police vehicle. He begged them and shouted, "Sir you already frisked me in the house and you did not find anything, you might just plant evidence in my pocket, please do not do so." The police brought him to Police Station 3, Talipapa, Quezon City, and placed him in a detention cell without an investigation being conducted.[11]

While inside his cell, the police showed him a plastic sachet and said that it was the shabu taken from him. SPO2 Sevilla asked him to call his uncle, but he refused to do so; he feared that his uncle would think that the confiscated shabu was really taken from him.[12]

Nida testified that she was at the kitchen of the appellant's house doing the laundry between 2:00-3:00 in the afternoon of April 6, 2003, when she heard loud knocks on the door. The appellant, who was in bed, stood up and opened the door.[13] A person entered, pushed the appellant backwards, and handcuffed him. This person then ordered the appellant to sit down so he (the appellant) could be asked questions. A total of four persons, all male, entered the house. Afterwards, the appellant and she were frisked; a lighter was taken from her, but nothing was seized from the appellant.[14]

The RTC primarily considered the reputation of SPO2 Sevilla in giving weight to his testimony, and held that "PO Sevilla has been a frequent witness in drugs cases and he has already established his credibility before this court." Its decision of April 14, 2005 found the appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165. It imposed on him the penalty of life imprisonment and ordered him to pay a fine of P50,000.00.

The appellant appealed to the CA, with the appeal docketed as CA-G.R. CR-H.C. No. 01095. In its decision of September 11, 2006, the CA affirmed the RTC decision.

In his brief[15] on appeal, the appellant contends that the court a quo gravely erred in finding him guilty beyond reasonable doubt for violation of R.A. No. 9165. He maintains that the court's order of conviction was merely based on the good reputation SPO2 Sevilla has established with the court based on the many drug cases he had handled. The trial court, too, wrongly interpreted the appellant's appearance and demeanor because "his head was bowed and his eyes were dreamy and sad." [16]

The defense harps, too, on the prosecution's failure to prove that the sachets allegedly recovered from the appellant were the ones submitted to the forensic chemist for examination, as well as its failure to follow the proper chain of custody in handling the seized evidence. It was only the arresting officer who testified that he confiscated the sachet from the accused. The police officer who conducted the subsequent investigation and to whom the confiscated sachet was allegedly turned over was not identified nor presented as witness. Hence the identity of the evidence presented against the appellant is doubtful.[17]

The prosecution counters with the argument that the trial court's findings on the credibility of SPO2 Sevilla and the lack of it with respect to the appellant and his witness Nida, should be given great weight and respect, as the trial court had the chance and the prerogative to hear and appreciate these matters at the trial. SPO2 Sevilla described in a clear and unwavering manner how the police team planned for and conducted the buy-bust operation, and how he marked the plastic sachet of shabu he bought from appellant immediately after the latter's arrest. Even the statement regarding the credibility of SPO2 Sevilla, a frequent witness before the trial court in drug cases, does not mean that the trial court was biased. If at all, it only meant that the trial court had known SPO2 Sevilla and had often observed his demeanor as a witness.

The prosecution further argues that the evidence for the defense is incredible and doubtful judging from the testimonies of the appellant and his witness Nida. While the appellant testified that his alleged unlawful arrest transpired at 5:25 p.m. of April 6, 2003, his witness Nida testified with certainty that she witnessed the arrest take place on the same date between 2:00 p.m. and 3:00 p.m. as she saw the time on the wall clock. Moreover, the appellant himself admitted that he had no knowledge of any adverse reason or ill motive that would induce the arresting police officers to falsely implicate him. To the prosecution, this lack of ill motive supports the view that SPO2 Sevilla testified to the truth and his acts should enjoy the presumption of regularity.

As to the corpus delicti, the prosecution stresses that it fully proved that the item recovered from the appellant is positive for shabu. The request for laboratory examination of the specimen confiscated from the appellant; the initial laboratory report showing that the item bought and/or seized from appellant is positive for shabu; and the final chemistry report were all formally offered in evidence, without any objection from the appellant. The defense, in fact, agreed to stipulate on the contents and the veracity of the forensic examinations made relative to the item recovered from the appellant. The corpus delicti having been proven and even admitted by the appellant, there was nothing more for the prosecution to establish; it had proven beyond reasonable doubt all the elements of the illegal sale of dangerous drugs, specifically - (a) the identity of the buyer and seller, the object and the consideration; and (b) the delivery of the things sold and the payment therefor.

THE COURT'S RULING

After due consideration, we resolve to acquit the appellant for the prosecution's failure to prove his guilt beyond reasonable doubt.

Non-observance of the
requirements of Section 21,
paragraph 1 of Article II
of Republic Act No. 9165

In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused - in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt.[18] Thus, while the charge was laid after a preliminary finding that a probable cause existed showing that a crime had been committed and the accused was probably guilty thereof, the criminal trial itself starts with the substantive presumption of the innocence on the part of the accused, rebuttable only by proof of his guilt beyond reasonable doubt. The burden of such proof rests with the prosecution which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.[19]

To prove the legitimacy of the police buy-bust operation, the prosecution presented the following: (a) a pre-operation report bearing Unit Control Number 0504-03-07 signed by the desk officer, police chief and team leader of the station drug enforcement unit, which indicated the type, time and general area of operation, the type of vehicles and firearms to be used, and the respective names of the team leader, poseur-buyer and members of the buy-bust team; (b) a photocopy of the marked money; and (c) the joint affidavit of the entrapment team signed by the poseur-buyer, SPO2 Sevilla, and PO1 Collado. The operation yielded a plastic sachet containing shabu allegedly confiscated from the appellant.

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.[20] 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[21] and of the accused facing a criminal charge[22] are safeguarded. We expressed this concern in *People v. Tan*,[23] when we 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. [Emphasis ours]

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: x x x 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. [Emphasis supplied]

The records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure despite its mandatory terms, as indicated by the use of "shall" in its directives. The deficiency is patent from the following exchanges at the trial:

FISCAL GIBSON ARAULA:

Q:

Now after you received that shabu or transparent plastic sachet containing shabu and gave the P100.00 bill to the accused, what happened next?

SPO2 LEVI SEVILLA:

A:

After I received [sic] I scratched my head.

Q:

What is the purpose?

A:

Pre-arrange[d] signal.

Q:

After that what happened?

A:

They swooped down in the scene.

Q:

What happened after that?

A:

I grab [sic] his right hand.

Q:

When you grabbed his right hand what did you tell him?

A:

I introduced myself as Police Officer.

Q:

Then after that what happened next?

A:

I grabbed the accused and informed him of his constitutional right.

Q:

After informing of his constitutional right what happened Mr. Witness?

A:

We brought him to our station.

Q:

How about the transparent plastic sachet, where is it?

A:

It is in my possession.

Q:

How about the buy-bust money in the amount of P100.00?

A:

I recovered it from the right pants pocket.

Q:

Now you said that you brought the accused to the Police Station, what happened to the Police Station?

A:

We turn [sic] him over to the Desk Officer.

Q:

What did you turn over?

A:

The accused and the evidences, the plastic shabu sir.

Q:

Before you turn over that plastic sachet Mr. Witness, what did you put there?

A:

I put my initial and initial of the accused.

Q:

If that transparent plastic sachet is shown to you, can you identify that Mr. Witness?

A:

Yes, sir.

Q:

Showing to you this plastic sachet Mr. Witness, what can you say to that transparent plastic sachet?

A:

This was the one I purchased from the accused because I have here my initial and the initial of the accused, sir.

x x x x[24] [Emphasis ours]

Other than the markings that SPO2 Sevilla alleged, it is clear that no physical inventory and no photograph of the seized items were taken in the presence of the accused or his counsel, a representative from the media and the Department of Justice (DOJ), and an elective official. Based on the above testimony, SPO2 Sevilla - the prosecution's lone witness - also did not mark the plastic sachet of shabu immediately upon seizure; it was only marked upon arrival at the police station. Thus, other than the stipulation regarding the handling and results of the specimen at the forensic laboratory, SPO2 Sevilla's testimony and the evidence he identified constitute the totality of the evidence for the prosecution on the handling of the allegedly seized items.

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, many of them far from ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. The participation of a representative from the DOJ, the media or an elected official alone can be problematic. 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." Thus, non-compliance 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.

In the present case, the prosecution apparently did not want to accept that the police had committed lapses in the

handling of the seized materials and thus did not bother to present any explanation to justify the non-observance of the prescribed procedures. It likewise failed to prove that the integrity and evidentiary value of the items adduced were not tainted as the discussions below will show. The non-observance by the police of the required procedure cannot therefore be excused.

The "chain of custody" over the confiscated items was not proven

Under Section 5, Article II[25] of R.A. No. 9165, 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 therefor. Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti - the body of the crime whose core is the confiscated illicit drug.[26]

Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the corpus delicti: every fact necessary to constitute the crime must be established.[27] The chain of custody requirement performs this function in buy-bust operations as it ensures that doubts concerning the identity of the evidence are removed.[28] In a long line of cases, we have considered it fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused.[29]

Black's Law Dictionary explains chain of custody in this wise:

In evidence, the one who offers real evidence, such as narcotics in a trial of drug case, must account for the custody of the evidence from the moment in which it reaches his custody until the moment in which it is offered in evidence, and such evidence goes to the weight not to admissibility of evidence. *Com. V. White*, 353 Mass. 409, 232 N.E.2d 335.

Likewise, Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002[30] which implements R.A. No. 9165 defines "chain of custody" as follows:

"Chain of Custody" means 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 receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Although this regulation took effect on October 18, 2002 (or after the commission of the crime charged), it is nonetheless useful in illustrating how the process of preserving the integrity of the chain of custody of the seized drugs is ensured and maintained. That the police failed to approximate these safeguards and the prosecution failed to prove the identity of the specimen allegedly seized and the specimen submitted as evidence during the trial is evident from SPO2 Sevilla himself who testified as follows:

FISCAL GIBSON ARAULA:

Q:

After informing [the accused] of his constitutional right what happened Mr. Witness?

SPO2 LEVI SEVILLA

A:

We brought him to our station.

Q:

How about the transparent plastic sachet, where is it?

A:

It is in my possession.

Q:

How about the buy-bust money in the amount of P100.00?

A:

I recovered it from the right pants pocket.

Q:

Now you said that you brought the accused to the Police Station, what happened to the Police Station?

A:

We turn him over to the Desk Officer.

Q:

What did you turn over?

A:

The accused and the evidences, the plastic shabu sir.

Q:

Before you turn over that plastic sachet Mr. Witness, what did you put there?

A:

I put my initial and initial of the accused.

x x x x

Q:

By the way Mr. Witness after you turned over to the investigator the plastic sachet, did you happen to know where the investigator brought the plastic sachet?

A:

I gave that plastic sachet first to the table of the Desk Officer and the Desk Officer gave it to the investigator.

FISCAL GIBSON ARAULA:

That would be all for the witness.

x x x x[31]

Significantly, this was the only testimony in the case that touched on the chain of custody of the seized evidence. It failed to disclose the identities of the desk officer and the investigator to whom the custody of the drugs was

given, and how the latter handled these materials. No reference was ever made to the person who submitted the seized specimen to the PNP Crime Laboratory for examination. Likewise, no one testified on how the specimen was handled after the chemical analysis by the forensic chemist. While we are aware that the RTC's Order of August 6, 2003 dispensed with the testimony of the forensic chemist because of the stipulations of the parties, we view the stipulation to be confined to the handling of the specimen at the forensic laboratory and to the analytical results obtained. The stipulation does not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession. To be sure, personnel within the police hierarchy (as SPO2 Sevilla's testimony casually mentions) 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. To repeat an earlier observation, even the time and place of the initial marking of the alleged evidence are not at all certain as the testimony on this point varies.

The recent case of *Lopez v. People*[32] 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:

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.

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. [Emphasis ours]

That the prosecution offered in evidence the request for laboratory examination (Exh. "A"), the initial laboratory report (Exh. "B"), and final Chemistry Report No. D-366-03 (Exh. "C"), to which the defense did not object, 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 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. Evidently, the prosecution has not proven beyond reasonable doubt the indispensable element of *corpus delicti* of the crime.

In *People v. Orteza*,[33] the Court had the occasion to discuss the implications of the failure to comply with Section 21, paragraph 1, to wit:

... In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*.

The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on

the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.

More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the shabu were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the corpus delicti. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the shabu. [Emphasis supplied]

We reached the same conclusion in *People v. Nazareno*[34] and *People v. Santos*,[35] where we again stressed the importance of complying with the prescribed procedure.

Physical inventory and photograph
requirement under Section 21
vis-a-vis "marking" of seized evidence

While the first sentence of Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165 states that "the apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same," the second sentence makes a distinction between warrantless seizures and seizures by virtue of a warrant, thus:

(a) x x x 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. [Emphasis supplied]

Thus, the venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation.

In seizures covered by search warrants, the physical inventory and photograph must be conducted in the place where the search warrant was served. On the other hand, in case of warrantless seizures such as a buy-bust operation, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires 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. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29[36] and on allegations of robbery or theft.[37]

For greater specificity, "marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized. If the physical inventory and photograph are made at the nearest police station or office as allowed by the rules,[38] the inventory and photography of the seized items must be made in accordance with Sec. 2 of Board Resolution No. 1, Series of 2002,[39] but in every case, the apprehended violator

or counsel must be present. Again, this is in keeping with the desired level of integrity that the handling process requires. Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.

Conclusion

The evidentiary gap in identifying the specimen that the forensic laboratory analyzed brings us back to where we started in analyzing the case - to the presumption of innocence that the Constitution accords the appellant. To reiterate, starting from this point, the prosecution must proceed to establish the guilt of the accused by proof beyond reasonable doubt. To do this, the prosecution presented its lone witness, SPO2 Sevilla, whom the lower court believed because the witness had testified before the court before. Thus, rather than look at the merits of his testimony, the lower court simply considered his person and past performance, and decided on this basis that he was a credible witness. This, by itself, is a major error - a violation of due process - on the part of the lower court that the appellate court apparently did not fully appreciate. A court must always decide on the basis of the evidence presented, not on the basis of any other extraneous consideration not before the court.

The court apparently banked also on the presumption of regularity in the performance that a police officer like SPO2 Sevilla 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 SPO2 Sevilla had any motive to falsify. The regularity of the performance of his duties, however, leaves much to be desired given the lapses in his handling of the allegedly confiscated drugs as heretofore shown.

An effect of this lapse, as we held in *Lopez v. People*,^[40] is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no ifs and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence.

People v. Santos^[41] 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.^[42] In *People v. Cañete*,^[43] we also said:

While the Court is mindful that 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. The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because "First, the presumption is precisely just that - a mere presumption. Once challenged by evidence, as in this case, xxx [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt." The presumption also cannot prevail over positive averments concerning violations of the constitutional rights of the accused. In short, the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.

Without the presumption of regularity, the evidentiary gap in identifying the seized evidence from its turnover by the poseur-buyer, its handling and custody, until its turnover to the forensic laboratory for analysis, stands out in bold relief. This gap renders the case for the prosecution less than complete in terms of proving the guilt of the accused beyond reasonable doubt.

From the perspective of the defense, we cannot help but note that the evidence for the defense is far from strong;

the appellant merely denied that a buy-bust operation took place and claimed that the evidence against him was a planted evidence. In this jurisdiction, the defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act.^[44] Likewise, the testimony of the other defense witness, Nida, fails to fully corroborate the appellant's testimony due to inconsistencies in their respective statements. These weaknesses, however, do not add any strength nor can they help the prosecution's cause. If the prosecution cannot establish, in the first place, the appellant's guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf in fact never arises. Thus, however weak the defense evidence might be, the prosecution's whole case still falls. To hark back to the well-entrenched dictum in criminal and constitution law: the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. Thus, we return to the conclusion that we should acquit the accused for failure of the prosecution - due the gap-induced weaknesses of its case - to prove the appellant's guilt beyond reasonable doubt.

WHEREFORE, in light of all the foregoing, the September 11, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01095 affirming the judgment of conviction of the Regional Trial Court, Branch 103, Quezon City is hereby REVERSED and SET ASIDE. Appellant Salvador Sanchez y Espiritu is ACQUITTED on reasonable doubt and is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

The Director of the Bureau of Corrections is DIRECTED to IMPLEMENT this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., Concur.

[1] Penned by Associate Justice Andres B. Reyes, and concurred in by Associate Justice Hakim S. Abdulwahid and Associate Justice Mariflor P. Punzalan Castillo; rollo, pp. 2-13.

[2] Penned by Judge Jaime N. Salazar, Jr.; CA rollo, pp. 15-18.

[3] Records, p. 1.

[4] Id., p. 19.

[5] TSN, October 29, 2003, pp. 2-5.

[6] Id., pp. 7-8.

[7] Id., pp. 9-11.

[8] Id., pp. 13-19.

[9] Order dated August 6, 2003; records, p. 26.

[10] TSN, January 20, 2005, p. 3.

[11] Id., pp. 4-6.

[12] Id., pp. 5 and 9.

[13] TSN, February 23, 2005, pp. 3 and 5.

[14] Id., pp. 5-8.

[15] CA rollo, pp. 33-44.

[16] Appellant's Brief, id., p. 39.

[17] Id., p. 41.

[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.

[19] *People v. Villanueva*, G.R. No. 131773, February 13, 2002, 376 SCRA 615, citing *People v. Gomez*, 270 SCRA 432, 444 (1997).

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

[21] 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.

[22] 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.

[23] G.R. No. 133001, December 14, 2000, 348 SCRA 116, citing *People v. Gireng*, 241 SCRA 11 (1995) and *People v. Pagaura*, 267 SCRA 17, (1997).

[24] TSN, October 29, 2003, pp. 9-11.

[25] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy, regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x

[26] See *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554.

[27] *People v. Kimura*, G.R. No. 130805, April 27, 2004, 428 SCRA 51.

[28] *Lopez v. People*, G.R. No. 172953, April 30, 2008.

[29] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611, citing *People v. Mapa*, 220 SCRA

670 (1993), *People v. Dismuke*, 234 SCRA 51 (1994), *People v. Casimiro*, 383 SCRA 400 (2002), *People v. Pedronan*, 404 SCRA 183 (2003), *People v. Kimura*, 428 SCRA 51 (2004), and *People v. Ong*, 432 SCRA 470 (2004).

[30] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

[31] TSN, October 29, 2003, pp. 10-12.

[32] G.R. No. 172953, April 30, 2008 (citations omitted).

[33] G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758-759.

[34] G.R. No. 174771, September 11, 2007, 532 SCRA 630, 637.

[35] G.R. No. 175593, October 17, 2007, 536 SCRA 489, 504.

[36] SEC. 29. Criminal Liability for Planting of Evidence. - Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

[37] See Oaminal, C.P., Textbook on the Comprehensive Dangerous Act of 2002 (Republic Act No. 9165), 2005, p. 65. See: *People v. Laxa*, G.R. No. 138501, July 20, 2001, 361 SCRA 622, 635; *People v. Kimura*, G.R. No. 130805, April 27, 2004, 428 SCRA 51; *People v. Nazareno*, G.R. No. 174771, September 11, 2007, 532 SCRA 630; and *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489.

[38] Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165.

[39] Pursuant to Section 21(a), IRR, R.A. No. 9165, *ibid*.

[40] *Supra* note 32.

[41] *Supra* note 35, p. 503.

[42] See also *People v. Ambrosio*, G.R. No. 135378, April 14, 2004, 427 SCRA 312; *People v. Chua*, G.R. Nos. 136066-67, February 4, 2003, 396 SCRA 657; *People v. Tan*, G.R. No. 129376, May 29, 2002, 382 SCRA 419.

[43] G.R. No. 138400, July 11, 2002, 384 SCRA 411.

[44] See *Suson v. People*, G.R. No. 152848, July 12, 2006, 494 SCRA 691.

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