

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARCISO AGULAY Y LOPEZ, ACCUSED-APPELLANT.

G.R. No. 181747. September 26, 2008

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-181747/>

CHICO-NAZARIO, J.:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 31 August 2007 of the Court of Appeals in CA-G.R. CR No. 01994 entitled, *People of the Philippines v. Narciso Agulay y Lopez*, affirming the Decision[2] rendered by the Regional Trial Court (RTC) of Quezon City, Branch 103, in Criminal Case No. Q-02-111597, finding accused-appellant Narciso Agulay y Lopez guilty of illegal sale and illegal possession of methamphetamine hydrochloride more popularly known as "shabu."

On 26 August 2002, accused-appellant was charged in an Information before the RTC of Quezon City with violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Information reads:

That on or about the 24[th] day of August, 2002 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 twenty five (0.25) gram of methylamphetamine hydrochloride a dangerous drug.[3]

When arraigned on 23 September 2002, accused-appellant pleaded not guilty.[4] Thereafter, trial ensued.

During the trial, the prosecution presented the testimonies of Police Officer (PO) 2 Raul Herrera, the poseur-buyer, PO2 Reyno Riparip (member of the buy-bust team), and Forensic Analyst Leonard M. Jabonillo.

The prosecution's version of the events are narrated as follows:

On 24 August 2002, at around 6:30 in the evening, an informant arrived at Police Station 5 and reported to the Chief of the Station Drug Enforcement Unit (SDEU) that a certain "Sing" had been selling shabu at Brgy. Sta. Lucia, in Novaliches, Quezon City.

A police entrapment team was formed. PO2 Herrera was assigned as poseur-buyer and was given a P100.00 bill, which he marked "RH," his initials. A pre-operation report bearing control No. 24-SDEU-02 was made and signed by Police Inspector (P/Insp.) Palaleo Adag dated 24 August 2002.

The buy-bust team rode in two vehicles, a Space Wagon and a Besta van, with a group of police officers inside. They stopped along J.P. Rizal St., Sta. Lucia, Novaliches, Quezon City.

PO2 Herrera and his informant stepped down from their vehicle and walked. The informant pointed the target pusher to PO2 Herrera. They approached and after being introduced to Sing, PO2 Herrera bought shabu using the marked P100.00 bill. Sing gave a small plastic sachet to PO2 Herrera who, thereafter, scratched his head as a signal. The other police companions of PO2 Herrera, who were deployed nearby, then rushed to the crime scene.

PO2 Herrera grabbed Sing and then frisked him. PO2 Herrera recovered two (2) plastic sachets from Sing's pocket. He also got the marked money from Sing.

The following specimens were submitted to the Philippine National Police (PNP) Crime Laboratory of the Central Police District in Quezon City for chemical analysis:

Three (3) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

(A) (RH1-RG1) = 0.07 gm

(B) (RH2-RG2) = 0.09 gm

(C) (RH3-RG3) = 0.09 gm[5]

Chemistry Report No. D-1020-2002 dated 25 August 2002 and prepared and presented in court by Forensic Analyst Leonard M. Jabonillo (of the PNP Crime Laboratory of the Central Police District of Quezon City) yielded the following results-

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a regulated drug. x x x.

CONCLUSION:

Specimen A, B and C contain Methylamphetamine Hydrochloride, a regulated drug.[6]

The defense, on the other hand, had an entirely different version of what transpired that night. It presented three witnesses: accused-appellant Narciso Agulay, Benjamin Agulay (brother of Narciso), and Bayani de Leon.

Accused-appellant Narciso Agulay narrated that at around 8:30 to 9:00 o'clock in the evening of 24 August 2002, he was manning his store when a car stopped in front of it. The passengers of said vehicle opened its window and poked a gun at him. The passengers alighted from the car, approached him and put handcuffs on him. Accused-appellant asked what violation he had committed or if they had a search warrant with them, but the arresting team just told him to go with them. Accused-appellant requested that he be brought to the barangay hall first, but this request was left unheeded. Instead, he was immediately brought to the police station. Upon reaching the police station, PO2 Herrera handed something to PO1 Riparip. Thereafter, PO2 Herrera and PO1 Riparip approached and punched him on the chest. They removed his shorts and showed him a plastic sachet. Later that night, the arresting officers placed him inside the detention cell. After about 30 minutes, PO1 Riparip and PO2 Herrera approached him. PO2 Herrera told him that if he would not be able to give them P50,000.00, they would file a case against him, to which he answered, "I could not do anything because I do not have money." [7]

Benjamin Agulay, brother of accused-appellant, testified that at around 8:30 to 9:00 o'clock in the evening of 24 August 2002, while he was smoking in their compound, a group of armed men in civilian clothes entered the place and arrested his brother, who was then manning a store. He tried asking the arresting officers what the violation of accused-appellant was but he was ignored. They then took accused-appellant to the police station.

On the other hand, the testimony of Bayani de Leon (a police asset of SPO1 Valdez of the buy-bust team) narrated that he, together with P/Insp. Suha, PO1 Herrera, PO2 Riparip, PO2 Gulferic and an arrested individual were on board a car while conducting a follow-up operation regarding a hold-up incident. When the car they were riding reached No. 51 J.P. Rizal Street, their team alighted and entered a compound. They saw accused-appellant and arrested him as he was allegedly involved in a hold-up incident, not with drug pushing. Accused-appellant was

taken to Police Station 5.

On 17 February 2006, the RTC found accused-appellant guilty of the offense charged, and meted out to him the penalty of Life Imprisonment. The dispositive portion of the RTC Decision is as follows:

Accordingly, judgment is rendered finding the accused NARCISO AGULAY Y LOPEZ GUILTY beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 as charged (for drug pushing) and he is hereby sentenced to suffer a jail term of LIFE IMPRISONMENT and to pay a fine of P500,000.00.

The methylamphetamine hydrochloride (in 3 sachets) involved in this case is ordered transmitted to the PDEA thru DDB for proper disposition.[8]

Accused-appellant filed his Notice of Appeal with Motion to Litigate as Pauper Litigant on 7 March 2006.

Accused-appellant filed his appellant's brief[9] with the Court of Appeals on 22 September 2006.

On 31 August 2007, the Court of Appeals issued its Decision denying accused-appellant's appeal as follows:

WHEREFORE, finding no reversible error in the Decision appealed from, the appeal is DENIED. The Decision of the RTC dated February 17, 2006 is AFFIRMED.[10]

Petitioner elevated the case to this Court via Notice of Appeal[11] dated 21 September 2007. In its Resolution dated 2 April 2008, this Court resolved to:

(3) Notify the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.

To avoid a repetition of the arguments, accused-appellant opted to adopt his appellant's brief dated 22 September 2006 while plaintiff-appellee adopted its appellee's brief dated 22 January 2007, instead of filing their respective supplemental briefs.

The issues raised are the following:

- THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS ILLEGALLY ARRESTED AND AS SUCH, THE SACHETS OF SHABU ALLEGEDLY RECOVERED FROM HIM ARE INADMISSIBLE IN EVIDENCE.
- THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.
- ACCUSED-APPELLANT CANNOT BE HELD LIABLE FOR THE CONSUMMATED CRIME OF ILLEGAL SALE OF SHABU BECAUSE OF THE FAILURE OF THE PROSECUTION TO ESTABLISH ALL OF ITS ESSENTIAL ELEMENTS.

Accused-appellant maintains that his arrest was illegal, and that the subsequent seizure of shabu allegedly taken from him is inadmissible as evidence against him. He also claims that the prosecution failed to prove his guilt beyond reasonable doubt, since the prosecution failed to show all the essential elements of an illegal sale of shabu.

From the foregoing issues raised by accused-appellant, the basic issue to be resolved hinges on whether accused-appellant was arrested in a legitimate "buy-bust" operation.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proved. The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial

courts to determine. Consistent with the rulings of this Court, it is a fundamental and settled rule that factual findings of the trial court and its calibration of the testimonies of the witnesses and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the Court of Appeals, as in this case. The exception is when it is established that the trial court ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. Considering that what is at stake here is the liberty of accused-appellant, we have carefully reviewed and evaluated the records of the RTC and the Court of Appeals. On evaluation of the records, this Court finds no justification to deviate from the lower court's findings and conclusion that accused-appellant was arrested in flagrante delicto selling shabu.

In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements:

- (1) identities of the buyer and seller, the object, and the consideration; and
- (2) the delivery of the thing sold and the payment therefor.[12]

The testimonies of the prosecution witnesses proved that all the elements of the crime have been established: that the buy-bust operation took place, and that the shabu subject of the sale was brought to and identified in court. Moreover, PO2 Herrera, the poseur-buyer, positively identified accused-appellant as the person who sold to him the sachet containing the crystalline substance which was confirmed to be shabu.[13] He narrated the events which took place the night accused-appellant was apprehended:

FIS. JURADO:

You said that you are stationed at Police Station 5, what were your duties there?

WITNESS:

As an operative sir.

FIS. JURADO:

What was your tour of duty on August 24, 2002?

WITNESS:

Broken hour sir.

FIS. JURADO:

But at around 6:30 in the evening, you are on duty?

WITNESS:

Yes, sir.

FIS. JURADO:

While you are on duty at that time and place, will you please inform this Honorable Court if there was an operation?

WITNESS:

Yes, sir.

FIS JURADO:

What is that operation all about?

WITNESS:

Buy bust operation sir.

FIS. JURADO:

Regarding what?

WITNESS:

Narcotic sir.

FIS. JURADO:

What is this all about?

WITNESS:

Alias Sing at Sta. Lucia sir.

FIS. JURADO:

How did you prepare for that buy-bust operation?

WITNESS:

An informant arrived and we reported to our Chief of SDEU and the Chief gave us P100.00 and I acted as poseur-buyer sir.

FIS. MJURADO:

Aside from that what else?

WITNESS:

I put my markings sir.

FIS. JURADO:

What is that markings (sic)?

WITNESS:

R.H. sir.

FIS. JURADO:

What is the significance of this R.H.?

WITNESS:

That mean(sic) Raul Herrera sir.

FIS. JURADO:

Do you have said money with you?

WITNESS:

Yes sir.

FIS. JURADO:

Will you please show that to this Honorable Court?

WITNESS:

Here sir.

x x x x

FIS. JURADO:

After you prepared the buy bust money, what else did you do?

WITNESS:

We proceeded to the target location, sir.

FIS. JURADO:

You said "we" who were with you?

WITNESS:

P/Insp. Addag, Rosario, SPO1 El Valdez, SPO2 Rey Valdez, Nogoy, Riparip and the confidential informant sir.

FIS. JURADO:

How did you proceed to the place of Sta. Lucia?

WITNESS:

We rode in a tinted vehicles (sic) one space wagon and Besta van, sir.

FIS. JURADO:

When you arrived in that place, what happened there?

WITNESS:

We asked our confidential informant to look for Sing, sir.

FIS. JURADO:

Did the confidential informant locate the said Sing?

WITNESS:

Yes sir along the street sir.

FIS. JURADO:

Where?

WITNESS:

J.P. Rizal St., Sta. Lucia, Novaliches, Quezon City, sir.

FIS. JURADO:

After your confidential informant found this Sing, what happened next?

WITNESS:

Our confidential informant asked me to go with him to see Sing to buy drug(s) sir.

FIS. JURADO:

Where is (sic) the transaction took (sic) place?

WITNESS:

Along the street sir.

FIS. JURADO:

What happened there?

WITNESS:

I was introduced by the confidential informant to Sing as buyer sir.

FIS. JURADO:

What happened next?

WITNESS:

I bought from him worth one hundred peso (sic) of shabu, sir.

FIS. JURADO:

What (sic) Sing do, if any?

WITNESS:

Sing gave me one small plastic sachet sir.

FIS JURADO:

After that what did you do next?

WITNESS:

I executed our pre-arranged signal sir.

FIS. JURADO:

For whom you executed this pre-arranged signal?

WITNESS:

To my companions sir.

FIS. JURADO:

Where are (sic) your companions at that time?

WITNESS:

On board at (sic) Besta and Space Wagon sir.

FIS. JURADO:

What was the pre-arranged signal?

WITNESS:

I scratched my head sir.

FIS. JURADO:

After scratching your head, what happened next?

WITNESS:

My back-up rushed to our place, sir.

FIS. JURADO:

After that what did you do next?

WITNESS:

I grabbed Sing and arrested him sir.

FIS. JURADO:

How about the money?

WITNESS:

I recovered the buy bust money from Sing, sir.

FIS. JURADO:

You mentioned plastic sachet, I am showing to you three (3) plastic sachets, which of these three was taken or sold to you?

WITNESS:

This one sir.

FIS. JURADO:

How did you come to know that this is the one?

WITNESS:

I have my initial(sic) R.H. sir.

x x x x

FIS. JURADO:

Aside from that, what happened next?

WITNESS:

When I frisked Sing, I was able to recover from him two (2) more plastic sachets sir.

FIS. JURADO:

Where did you get that plastic sachet?

WITNESS:

Right side pocket sir.

FIS. JURADO:

Short or pant?

WITNESS:

Short sir.

FIS. JURADO:

Where are these two plastic sachets that you are mentioning?

WITNESS:

Here sir.

FIS. JURADO:

How did you come to know that these are the two plastic sachets?

WITNESS:

I put my markings sir RH.

x x x x

COURT:

After that what happened next?

WITNESS:

We brought him to our Police Station, sir.

FIS. JURADO:

You mentioned Sing if this Sing is inside this courtroom, will you be able to identify him?

WITNESS:

Yes sir that man.

INTERPRETER:

Witness pointing to a man who identified himself as Narciso Agulay and his nickname is "Sing." [14]

His testimony was corroborated on material points by PO1 Riparip, one of the back-up operatives in the buy-bust operation that night, to wit:

FIS. JURADO:

You said that you are a police officer, where were you assigned on August 24, 2002?

WITNESS:

I was assigned at Police Station 5 for drug(sic) sir.

FIS. JURADO:

What was your tour of duty at that time?

WITNESS:

Broken hour sir.

FIS. JURADO:

You were on duty on August 24, 2002 at 6:30 in the evening?

WITNESS:

Yes sir.

FIS. JURADO:

What was your functions(sic) as such?

WITNESS:

To conduct follow up operation on drugs and other crimes sir.

FIS. JURADO:

Did you conduct operation on that day?

WITNESS:

Yes sir we conducted Narcotic operation sir.

FIS. JURADO:

You said you conducted narcotic operation, where?

WITNESS:

Sta. Lucia, particularly at J.P. Rizal St., Novaliches, Quezon City, sir.

FIS. JURADO:

To whom this Narcotic operation conducted?

WITNESS:

To certain Alias Sing, sir.

FIS. JURADO:

Who were with you at that time?

WITNESS:

Valdez, Rosario, Herrera, Addag and other(sic) sir.

FIS. JURADO:

What was your participation in the said operation?

WITNESS:

I acted as back up sir.

FIS. JURADO:

As back up, what did you do?

WITNESS:

We position ourselves to a certain distance and where we can see the poseur-buyer sir.

FIS. JURADO:

Who was the poseur-buyer?

WITNESS:

Herrera sir.

FIS. JURADO:

What did you see?

WITNESS:

The poseur buyer executed the pre-arranged signal and we rushed to his position and arrested the target person Sing sir.

FIS. JURADO:

When we (sic) rushed to the target place what happened next?

WITNESS:

Herrera frisked Sing and we brought him to the police station sir.[15]

Accused-appellant contends his arrest was illegal, making the sachets of shabu allegedly recovered from him inadmissible in evidence. Accused-appellant's claim is devoid of merit for it is a well-established rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court, to wit:

Section 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.[16] If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.[17]

There are eight (8) instances when a warrantless search and seizure is valid, to wit:

(1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "stop and frisk" operations.

Considering that the legitimacy of the buy-bust operation is beyond question, the subsequent warrantless arrest and warrantless search and seizure, were permissible. The search, clearly being incident to a lawful arrest, needed

no warrant for its validity. Thus, contrary to accused-appellant's contention, the contraband seized from him, having been obtained as a result of the buy-bust operation to which the defense failed to impute any irregularity, was correctly admitted in evidence. Noteworthy is the fact that prior to the dispatch of the entrapment team, a pre-operation report[18] was made bearing Control No. 24-SDEU-02 dated 24 August 2005. The pre-operation report stated that an Anti-Narcotic Operation was to be conducted at Barangay Sta. Lucia in Novaliches, Quezon City, and indicated the police officers involved, including the vehicles to be used. This only bolsters the testimony of PO2 Herrera and PO1 Riparip as to the legitimacy of the buy-bust operation.

The defense contends there is a clear doubt on whether the specimens examined by the chemist and eventually presented in court were the same specimens recovered from accused-appellant. The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated pursuant to Section 21,[19] Article II of Republic Act No. 9165 will not discharge accused-appellant from his crime. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. In *People v. Del Monte*,[20] this Court held 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 the instant case, we find the integrity of the drugs seized intact, and there is no doubt that the three sachets of drugs seized from accused-appellant were the same ones examined for chemical analysis, and that the crystalline substance contained therein was later on determined to be positive for methylamphetamine hydrochloride (shabu).

The defense, in fact, admitted the existence and authenticity of the request for chemical analysis and the subsequent result thereof:

FIS. JURADO:

Chemist Engr. Jabonillo is present your honor.

COURT:

Any proposal for stipulation?

FIS. JURADO:

That there is letter request for examination of white crystalline substance marked as follows: A (pH1); B (pH2) and C (pH3)?

ATTY. QUILAS:

Admitted your honor.

FIS. JURADO:

As a result of the said qualitative examination chemist issued a chemistry report No. D-1020-2002?

ATTY. QUILAS:

Admitted your honor.

FIS. JURADO:

In view of the admission your honor, may we request that Letter request dated August 25, 2002 be marked as Exhibit `D' and Chemistry Report No. D-1020-2002 as Exhibit `E' your honor.

COURT:

Mark it.

In view of the presence of the Chemist, Engr. Jabonillo, He is being called to the witness stand for cross examination of the defense counsel.[21]

On cross-examination by the defense, Forensic Analyst Jabonillo stated that the drugs presented in court were the same drugs examined by him and submitted to him on 25 August 2002:

ATTY. QUILAS:

In this particular case, you received three plastic sachets?

WITNESS:

Yes sir.

ATTY. QUILAS:

When you receive these three plastic sachets were these already segregated or in one plastic container?

WITNESS:

I received it as is sir.

x x x x

ATTY. QUILAS:

How sure you were (sic) that three plastic sachet (sic) containing methylamphetamine hydrochloride were the same drug (sic) submitted to you on August 25, 2002.

WITNESS:

I personally place (sic) my marking sir.

ATTY. QUILAS:

You want to impress before this Honorable Court these were the same items that you received on August 25, 2002?

WITNESS:

Yes sir.[22]

On cross-examination by the defense, the same witness testified, to wit:

ATTY. DE GUZMAN:

I understand you are Chemical Engineer, am I correct?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

And that you have been (sic) worked as a Chemist in the PNP for several years?

WITNESS:

Since March, 200 (sic), sir.

ATTY. DE GUZMAN:

What would be your practice when specimen submitted for you to examine, was it already pre-marked by the person who submit for examination?

WITNESS:

Normally, sir.

ATTY. DE GUZMAN:

What do you mean normally, you also put the marking?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

So everything has pre-mark?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

And then when pre-mark specimen is submitted to you, you merely analyze the same is that correct?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

And you do not change any marking there?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

Now in the marking that we have it appearing that Exhibits A, B, and C are PH, am I correct?

WITNESS:

RH sir, not PH.

ATTY. DE GUZMAN:

Because it shows in the zerox (sic) copy that it is RH because of that slant. Now when this specimen was submitted to you was it three specimens submitted to you or only one specimen A, B, C were ranking to one?

WITNESS:

No sir, three (3) specimens.[23]

It is significant to note that accused-appellant stated in his demurrer to evidence that the specimens submitted for laboratory examination were not the three plastic sachets that were allegedly recovered by the poseur-buyer PO2 Raul Herrera, which may thus be construed to be an implied admission.[24]

Accused-appellant's allegation that he is a victim of a frame-up, which has been held as a shop-worn defense of those accused in drug-related cases, is viewed by the Court with disfavor. Like the defense of alibi, frame-up is an allegation that can easily be concocted.[25] For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials.[26] Absent any proof of motive to falsely accuse him of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over that of the accused-appellant.[27]

Apart from his defense that he is a victim of a frame-up and extortion by the police officers, accused-appellant could not present any other viable defense. Again, while the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence, for the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity. This, it failed to do.

Bayani de Leon's testimony that the accused was being taken as a carnapping suspect only further weakened the defense, considering it was totally out of sync with the testimony of accused-appellant vis-à-vis the positive testimonies of the police officers on the events that transpired on the night of 24 August 2002 when the buy-bust operation was conducted. It is also highly suspect and unusual that accused-appellant never mentioned that he was taken as a carnapping suspect if indeed this were the case, considering it would have been his ticket to freedom.

To recall, on direct examination by the defense counsel, Bayani de Leon testified as follows:

ATTY. CONCEPCION:

Mr. Witness, were you able to talk to Narciso Agulay that time he was arrested?

WITNESS:

Yes ma'am, when Narciso Agulay was put inside a room at Station 5 and in that room, I, Riparip and Herrera entered.

ATTY. CONCEPCION:

What was the conversation all about?

WITNESS:

He was being asked if he was one of those who held up a taxi ma'am.

ATTY. CONCEPCION:

What was the response of Narciso Agulay?

WITNESS:

Narciso Agulay was crying and at the same time denying that he was with that person. When we told him that the person we arrested with the firearm was pointing to him, he said that he does not know about that incident and he does not know also that person who pointed him ma'am.[28]

Witness Bayani de Leon's testimony is dubious and lacks credence. From the testimony of Bayani de Leon, it is apparent that accused-appellant would necessarily have known what he was being arrested for, which was entirely inconsistent with accused-appellant's previous testimony. Such inconsistency further diminished the credibility of the defense witness. It would seem that Bayani de Leon's testimony was but a mere afterthought.

Moreover, Bayani de Leon testified that he allegedly came to know of the fact that accused-appellant was being

charged under Republic Act No. 9165 when he (Bayani de Leon) was also detained at the city jail for robbery with homicide, testifying as follows:

FIS. ARAULA:

And you only knew that Narciso Agulay was charged of Section 5, R.A. 9165 when you were detained at the City Jail?

WITNESS:

Yes sir.

FIS. ARAULLA:

In fact, you were talking with each other?

WITNESS:

Yes sir, and I asked what is the case filed against him.

FIS. ARAULLA:

And that is the time you know that Narciso Agulay was charged of (sic) Section 5?

WITNESS:

Yes sir.[29]

This Court, thus, is in agreement with the trial court in finding that:

Bayani himself appears to be a shady character. By his admission he is a bata or agent of PO Vasquez. As far as the court knows, such characters are used by the police because they are underworld character (sic).[30]

Finally, the testimony of accused-appellant's brother, Benjamin Agulay, is not convincing. Benjamin, being accused-appellant's brother, we find him to be unreliable. Suffice it to say that, having been given by a relative of the accused-appellant, his testimony should be received with caution.

On this premise, this Court has laid down the "objective" test in scrutinizing buy-bust operations. In *People v. Doria*,[31] we said:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. x x x.

It bears to point out that prosecutions of cases for violation of the Dangerous Drugs Act arising from buy-bust operations largely depend on the credibility of the police officers who conducted the same, and unless clear and convincing evidence is proffered showing that the members of the buy-bust team were driven by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[32]

We thus hold that accused-appellant's guilt has been established beyond reasonable doubt. This Court shall now determine the proper penalties to be imposed on him.

An examination of the Information reveals that accused-appellant was charged with the unauthorized sale and delivery of dangerous drugs consisting of twenty-five hundredths (0.25) gram of methylamphetamine hydrochloride (shabu). From the testimonies of the prosecution witnesses, only one sachet[33] was sold and delivered to the poseur-buyer, PO2 Herrera. The two other sachets[34] were not sold or delivered, but were found by PO2 Herrera inside the right pocket of accused-appellant's pair of shorts upon frisking, after the latter was caught in flagrante delicto during the buy-bust operation.

Accused-appellant could have been charged with the possession of dangerous drugs[35] on account of the second and third sachets. This was not done. He cannot then be convicted of possession of dangerous drugs, without being properly charged therewith, even if proved. Accused-appellant, however, is still guilty, as charged in the Information, of selling and delivering one sachet to the poseur-buyer.

Under Republic Act No. 9165, the unauthorized sale of shabu carries with it 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).

Pursuant, however, to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine, instead of death, shall be imposed.

We, therefore, find the penalty imposed by the trial court, as affirmed by the Court of Appeals - life imprisonment and a fine of P500,000.00 - to be proper.

WHEREFORE, premises considered, the Court of Appeals Decision in CA-G.R. CR No. 01994 dated 31 August 2007 is AFFIRMED.

SO ORDERED.

Velasco,[*] Jr., and Reyes, JJ., concur.

Brion,**] J., I dissent.

Tinga,[*] J., join Brion's dissent.

* Per Special Order No. 517, dated 27 August 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justices Dante O. Tinga and Presbitero J. Velasco, Jr. to replace Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez, who are on official leave.

** Justice Arturo D. Brion was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 21 April 2008.

[1] Penned by Associate Justice Portia-Alino-Hormachuelos with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe, concurring. Rollo, pp. 2-13.

[2] Penned by Judge Jaime N. Salazar, Jr.; CA rollo, pp. 20-23.

[3] Records, p. 1.

[4] Id. at 23.

[5] Id. at 14.

[6] Id.

[7] TSN, 25 October 2004, p. 13.

[8] Records, p. 23.

[9] Id. at 35-49.

[10] Rollo, p. 12.

[11] Pursuant to Section 13, Rule 124 of the Revised Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

[12] *People v. Lee Hoi Ming*, 459 Phil. 187, 193 (2003).

[13] Chemistry Report No. D-1020-2002; Records, p. 14.

[14] TSN, 16 October 2002, pp. 3-10.

[15] TSN, 16 October 2002, pp. 20-23.

[16] *People v. Valencia*, 439 Phil. 561, 574 (2002).

[17] *People v. Abbu*, 317 Phil. 518, 525 (1995).

[18] Pre-Operation Report; Records, p. 6.

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

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

[20] G.R. No. 179940, 23 April 2008.

[21] TSN, 28 March 2003, pp. 2-3.

[22] Id. at 9-10.

[23] TSN, 15 February 2005, pp. 3-5.

[24] Records, p. 94.

[25] *People v. De Leon*, 440 Phil. 368, 388 (2002); *People v. Lee Hoi Ming*, supra note 12 at 195.

[26] *People v. De Leon*, id., citing *People v. Zheng Bai Hui*, 393 Phil. 68, 135 (2000), *People v. Boco*, 368 Phil. 341, 366-367 (1999); *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194, 204.

[27] *People v. Bongalon*, 425 Phil. 96, 116 (2002).

[28] TSN, 24 January 2006, pp. 6-7.

[29] Id. at 11.

[30] CA rollo, p. 23.

[31] 361 Phil. 595, 621 (1999).

[32] *People v. Casolocan*, G.R. No. 156890, 13 July 2004, 434 SCRA 276, 282.

[33] TSN, 16 October 2002, pp. 8-9.

[34] *Id.*

[35] Republic Act No. 9165, Article II, Section 11.

DISSENTING OPINION

***BRION, J.:**

That no person shall be denied the right to life, liberty or property without due process of law, nor be denied the equal protection of the laws stands at the first section of Article III (the Bill of Rights) of the Philippine Constitution because it is the most basic. In criminal proceedings, the due process requirement is so zealously guarded that over and above what Article III, Section 1 provides, the framers of the Constitution still saw it necessary to provide under Section 14 of the same Article that "No person shall be held to answer for a criminal offense without due process of law." Section 14 particularizes its protection by specifying under its paragraph (2) the rights that an accused shall enjoy, foremost among them the right to be "presumed innocent until the contrary is proved." Contrary proof, in constitutional terms, is proof beyond reasonable doubt that the prosecution must adduce evidence showing that a crime has been committed as charged, and that the accused committed the crime. It is only upon such proof that the burden of evidence shifts to the accused who is then given his or her chance to adduce evidence to show that no crime was committed; or that circumstances exist to justify the commission of the act charged; or that somebody else committed the crime; or that reasonable doubt exists on whether a crime has been committed or that the accused committed the crime. An accused is only convicted if he fails in all these.

Under the proven facts of the present case, the prosecution has not proven that a crime had been committed through proof beyond reasonable doubt that the three plastic sachets that were admitted into evidence during the trial were in fact the same items seized from the accused-appellant when he was arrested. In short, there exists a gap in the prosecution's evidence that opens the room for doubt on whether there indeed had been a buy-bust operation where the accused was caught red-handed selling prohibited substance to a police operative.

The ponencia's conviction of the accused-appellant mainly relied on the credibility of two witnesses, namely: PO2 Raul Herrera (PO2 Herrera, the poseur-buyer) and PO2 Reyno Riparip (PO2 Riparip, who served as back-up in the buy-bust operation). A third witness testified for the prosecution - Forensic Analyst Leonard M. Jabonillo (Forensic Chemist Jabonillo) of the PNP Crime Laboratory of the Central Police District of Quezon City. His testimony, however, only dwelt on the chemical analysis of the specimens the police submitted to him; hence, it carries little relevance to the main thrust of this dissent - i.e., that the buy-bust operation and the consequent seizure of the prohibited substance either did not take place or have not been proven beyond reasonable doubt because of a gap in the prosecution's evidence. Significantly, the police testimonies did not receive the minute and detailed scrutiny that they deserve because of the presumption that the police witnesses must have spoken the truth because they were policemen in the regular performance of their official duties. This presumption not only lent credibility to the police witnesses; it also became the basis to disbelieve the defense evidence: who were they to be believed after the police had spoken? Indeed the ponencia's line of reasoning is unfortunate. Had it chosen to minutely scrutinize the police testimonies in light of the procedural requirements of R.A. 9165 on how seized evidence must be handled, and considered all these with the defense evidence - particularly the allegation of "frame up" - a far different conclusion would have resulted, rendering this Dissent unnecessary; the accused

would have been acquitted because the prosecution failed to prove its case beyond reasonable doubt and thus failed to overcome his constitutional presumption of innocence.

The requirements of Section 21, paragraph 1 of Article II of Republic Act No. 9165.

A police buy-bust operation, because of the built-in danger for abuse that it carries, is governed by a specific procedure with respect to the seizure and custody of drugs. In *People v. Tan*,^[1] we recognized that "by the very nature of anti-narcotics 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 pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, 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 is embodied in Section 21, paragraph 1, Article II of Republic Act No. 9165, which provides:

- 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 supplied]

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

Nothing in the records or in the evidence adduced show that the buy-bust team followed this procedure despite its mandatory terms as indicated by the use of "shall" in its directives. To be sure, the implementing rules offer some flexibility when it states, albeit without any sufficient basis in the underlying law, 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." This clause, however, is not a saving or escape mechanism that by itself justifies and validates every improper seizure and custody of the seized items. There still must be shown justifiable grounds as well as proof that the integrity and evidentiary value of the evidence have been preserved. These justificatory requirements must of course be read in light of the above-described purpose of the law. Significantly, not only does the present case lack the most basic or elementary attempt at compliance with the law and its implementing rules; it fails as well to provide any justificatory ground showing that the integrity of the evidence adduced had all along been preserved.

In several cases that came before us, we repeatedly emphasized that the "failure of the [police] to comply with the

requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from [the] appellant." [2] Hence, while the non-compliance with the prescribed procedure may not result in the inadmissibility of the seized items, its integrity as evidence is greatly affected. They taint as well the regularity of the performance of police duties, as the discussions below will show.

In *People v. Orteza* [3], 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* [4] and *People v. Santos*, [5] where we again stressed the importance of complying with the prescribed procedure.

The prosecution totally failed to prove the chain of custody over the seized items.

Other than the markings that PO2 Herrera alleged, the prosecution in the present case miserably failed to undertake any of the procedures that the above-quoted law and regulation require. There was no physical inventory and no photograph of the confiscated items that were taken in the presence of the accused. The police failed as well to definitely show by evidence the time PO2 Herrera marked the confiscated items. The deficiency patently shows in the following exchange during the trial:

FIS. JURADO:

You mentioned plastic sachet, I am showing to you three (3) plastic sachets, which of these three was taken or sold to you?

WITNESS:

I have my initial (sic) R.H. sir.

x x x x

FIS. JURADO

Aside from that, what happened next?

WITNESS:

When I frisked Sing, I was able to recover from him two (2) more plastic sachets sir.

x x x

X X X

FIS. JURADO:

How did you come to know that theses are the two plastic sachets?

WITNESS:

I put my markings sir RH.

X X X

COURT:

After that what happened next?

WITNESS:

We brought him to our Police Station, sir.

While PO2 Herrera testified on the turnover of the seized items to the PNP Crime Laboratory for examination, no evidence was presented regarding the custody of the drugs during the interim period between the arrest and confiscation of the seized items and its turnover. Thus, there was a substantial and significant gap in the chain of custody of the seized evidence.

In the recent case of *Lopez v. People*,^[6] the Court explained the importance of establishing the chain of custody of the confiscated drugs, to wit:

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 readily 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 supplied]

Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002^[7] which implements R.A. No. 9165 defines "chain of custody" as follows:

b."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[8] 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 upheld and maintained, and that is, by duly recording its authorized movements from the time of its seizure, to its handling by the police, to the receipt of the forensic laboratory, until it is presented in court and subsequently destroyed. This is the "movement" or chain of custody of the items allegedly seized from the accused-appellant that is plainly lacking in the present case as early as the time of their alleged seizure. Aside from the deficiencies pointed out above, the lack of documentation of the chain of custody is highlighted by the testimony of Forensic Analyst Jabonillo who testified on the manner of his receipt of the seized items which he analyzed on August 25, 2002, to wit:

ATTY. DE GUZMAN:

What would be your practice when specimen submitted for you to examine, was it already pre-marked by the person who submit for examination?

WITNESS:

Normally, sir.

ATTY. DE GUZMAN:

What do you mean normally, you also put the marking?

WITNESS:

Yes, sir.

ATTY. DE GUZMAN:

And then when pre-mark specimen is submitted yo tou, you merely analyze the same is that correct?

WITNESS:

Yes, sir.

Clearly, this testimony failed to disclose the identity of the person who submitted the items which he later on examined.[9] Likewise, he failed to testify on how the evidence was handled after his chemical analysis.

The integrity and the evidentiary value of the examined and presented seized items are highly questionable.

The ponencia found that the integrity and evidentiary value of the seized items were preserved by relying on the testimony of Forensic Analyst Jabonillo who, on the witness stand, affirmed that the sachets containing the shabu which was presented in court were the same ones that he examined. This testimony, however, has no bearing on the question of whether the specimens he examined were the ones seized from the accused or whether they were seized from the accused at all. All that this testimony proved - and these the defense admitted[10] - were the existence and authenticity of the request for chemical analysis and the results of this analysis, not the required chain of custody from the time of seizure of the evidence.

For a better appreciation of the evidentiary worth of the testimony of Forensic Analyst Jabonillo, Section 44, Rule 130 on the Rules of Evidence provides that "entries in official records made in the performance of his duty by a public officer . . . or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein." The defense admission only relates to the facts stated in the document, i.e., that a

request for chemical analysis was made on the items submitted together with the request to the PNP Crime Laboratory; and second, the admission only relates to the results of the chemical analysis conducted on the items stated in the request. To reiterate, it did not have the effect of admitting that the items stated in the request and submitted for examination were in fact the very items seized from accused-appellant.

The Clash of Presumptions

Where, as in this case, the ruling relies on the presumption in the regular performance of official duties, there must necessarily be a clash of presumptions in light of the presumption of innocence that every accused enjoys. We note that the presumption of innocence is the root presumption that applies at the inception of the case. It is a constitutional presumption that exists for the accused arising from the fact that he is charged with the commission of a crime; the presumption exists without requiring the accused to do anything to trigger it other than the fact of standing criminally charged.

The presumption in the regularity in the performance of official duties, on the other hand, only enters the picture as part of the case for the prosecution in its bid to establish the guilt of the accused beyond reasonable doubt. As it operates, the prosecution calls upon government officials tasked with responsibilities related to the crime charged, and on the basis of their testimonies, submit that the crime has been duly proven. These testimonies may constitute proof beyond reasonable doubt on the basis of the evidentiary presumption that these officials were in the regular performance of their duties and had no reason to falsify - a statutory and rebuttable presumption created under Rule 131, Section 3(m) of the Rules of Court on evidence. From this perspective and from the fact that what this presumption can overturn is a constitutional presumption in favor of the accused, the premises underlying this evidentiary presumption must be sufficiently strong to support what it aims to do. This required strength in turn can only come from the general body of adduced evidence showing that the performance of functions carried no taint of irregularity whatsoever and that the official had no motive to falsify. Failing in either of these, the presumption cannot exist; in fact, to continue to recognize it as sufficient to overturn the constitutional presumption of innocence would be an unconstitutional act.

As explained in the case of *People v. Santos*,^[11] the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. Moreover,

.. As the Court ruled in *People v. Ambrosio*:

The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, [f]irst, the presumption is precisely just that -- a mere presumption. Once challenged by evidence, as in this case, . . . [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.^[12]

The Presumption of Regularity
cannot apply where the performance
of duty is tainted with irregularity.

As painstakingly shown above from the prism of the prosecution's own evidence, the police failed to regularly discharge its duties in the conduct of the buy-bust operations, particularly in the handling of the items seized. There is a wide gap in the prosecution's evidence that cannot but have an effect on the case as a whole, even if it does not result in the inadmissibility of the evidence.

One such effect of the failure to comply with the procedure required by Section 21, Article II of R.A. No. 9165, as we held in *Lopez v. People*^[13] 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.

Another effect, as we held in *Valdez v. People*[14] is to create a doubt on the existence of *corpus delicti*, i.e., on the issue of whether a crime had indeed been committed. Without credible evidence showing the existence of the prohibited drug that had been the subject matter of the illegal transaction, there can be no crime committed.

Without the presumption of regularity, the testimonies of the police witnesses must stand on their own merits and must sufficiently establish proof beyond reasonable doubt that a crime had been committed and that the accused committed this crime. The defense evidence must likewise be so regarded once the prosecution has established a *prima facie* case, without however being hobbled by the presumption of regularity.

Another necessary consequence of the absence of any presumption of regularity is that the *ponencia* can no longer impose on the defense the burden of proving that the police had an improper motive in charging the accused with the illegal sale of prohibited drug; the *ponencia* can no longer conclude, as it did, that the police testimonies are credible in the absence of such motive.

Interestingly, the police motive was precisely the defense the accused presented, only to be discredited because of the *ponencia*'s undue reliance on the presumption of regularity. As its main defense, the accused testified that he was the victim of a *hulidap* and that his arrest was merely a scheme to extort money from him. This imputation did not stand alone as it was corroborated by defense witness De Leon, an admitted police asset, who testified that the accused-appellant was really picked up by the police on a hold-up charge on August 24, 2002. Unfortunately, De Leon's testimony did not stand a chance of being believed given the contrary police testimony supported by its presumption of regularity and was simply brushed aside, allegedly because De Leon spoke with the accused-appellant prior to taking the witness stand; because he is a "shady character"; and because his testimony was inconsistent with version of the accused.

A deeper consideration of De Leon's testimony - unaffected by any contrary evidence supported by a presumption of regularity - would however show that it is not as worthless as the *ponencia* concluded it to be. First, De Leon appears to be the only disinterested witness in the case as the prosecution failed to show that he had any selfish motivation, had something to gain in the event of a favorable outcome for the accused, or had reason to falsify. Second, human experience - particularly, Philippine experience - tells us that as a police asset, he placed himself at a very serious risk in testifying as he did against the police. For this alone, his testimony should deserve serious notice and consideration. Lastly, the prosecution miserably failed to refute De Leon's allegations, specifically, that he was a police asset and was with the police team who picked the accused-appellant on a holdup charge, and that he saw the accused-appellant being interrogated by the police on August 24, 2002 on a *carnapping* charge and not on a drug-related matter. Thus, he claimed that that he did not know that the accused was charged in a drug case until he spoke with him at a much later time.[15]

In the absence of any contrary presumption of regularity, the testimony of Benjamin Agulay, brother of the accused, should not likewise automatically be dismissed as biased testimony. While it should be looked upon with caution, it does not necessarily follow that it is unworthy of belief. It should have been at least examined for its merits in light of the prosecution's own evidence.

In sum, aside from the gap in the prosecution's evidence proving the identity of the prohibited items allegedly seized,[16] the defense of frame-up is not without its evidentiary merits after the presumption of regularity is taken away. Even granting that the accused did indeed make an implied admission in his demurrer to evidence acknowledging that the buy-bust operation actually took place, the admission still does not fully constitute proof

beyond reasonable doubt capable of overcoming the accused's presumption of innocence; it does not establish by proof beyond reasonable doubt through the evidence adduced during the trial that the prohibited drug identified in court was the same prohibited drug that the accused illegally sold. The accused, under the circumstances, should be acquitted on ground of reasonable doubt.

* Designated additional member of the Third Division vice Justice Antonio Eduardo B. Nachura per Raffle dated April 21, 2008.

[1] G.R. No. 133001, December 14, 2000, 348 SCRA 116, 126-127, citing *People v. Gireng*, 241 SCRA 11 (1995).

[2] *People v. Lim*, G.R. No. 141699, August 7, 2002, 386 SCRA 581, 598.

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

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

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

[6] G.R. No. 172953, April 30, 2008.

[7] Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA 9165 in relation to Section 81(b) Article IX of RA 9165.

[8] Adopted and approved on October 18, 2002.

[9] Decision, p. 22.

[10] *Id.*, p. 20.

[11] *Supra.* note 5, p. 503.

[12] *Ibid.*

[13] *Supra.*, note 6.

[14] G.R. No. 170180, November 23, 2007, 538 SCRA 611, 628-629.

[15] Decision, p. 27.

[16] *People v. Nazareno*, *supra.* Note 4.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.