

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BASHER TOMAWIS Y ALI, ACCUSED-APPELLANT.

G.R. No. 228890. April 18, 2018

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CAGUIOA, J:

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[1]

The role of the Court in the fight against the illegal drug menace is to ensure that the guilty is convicted and that the appropriate penalty is imposed. In the discharge of this task, the Court must be mindful that the rights of the individual must, at all times, be safeguarded. As Blackstone's ratio goes, it is better that 100 guilty persons should escape than that one innocent person should suffer.

The Facts

Before the Court is an appeal[2] filed pursuant to Section 13(c), Rule 124 of the Revised Rules on Criminal Procedure by accused-appellant Basher Tomawis y Ali (Tomawis) assailing the Decision[3] dated June 6, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06662, which affirmed the Judgment[4] dated January 29, 2014 of the Regional Trial Court (RTC), Branch 204, Muntinlupa City in Crim. Case No. 08-636, finding him guilty beyond reasonable doubt of violating Section 5,[5] Article II of Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portion of the Information[7] against Tomawis states:

That, on August 21, 2008 at around 6:30 P.M. at Alabang, Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized, did then and there willfully, unlawfully and feloniously sold, traded and delivered to a PDEA agent a methamphetamine hydrochloride, otherwise known as "shabu", a dangerous drug, with a net weight of 12.74 grams as evidenced by Chemistry Report Number DD-153-08 in violation of the aforecited law.

CONTRARY TO LAW.[8]

Upon his arraignment, Tomawis pleaded not guilty.[9] During the pre-trial conference, the following facts were stipulated upon: (1) the identity of the accused and jurisdiction of the RTC over his person; (2) the qualification of the forensic chemist who conducted the drug test; (3) the sample examined by the forensic chemist tested positive for methylamphetamine hydrochloride with a weight of 12.7402 grams; and (4) the sample was delivered by Intelligence Officer 1 (IO1) Mabel Alejandro (IO1 Alejandro).[10]

Version of the Prosecution

The Prosecution presented as witnesses Philippine Drug Enforcement Agency (PDEA) agents IO1 Alejandro, IO1 Beltran Lacap, Jr. (IO1 Lacap), and two Barangay councilors of Brgy. Pinyahan, Quezon City, Jonathan B. Burce (Burse) and Melinda S. Gaffud (Gaffud). Their testimonies, as summarized by the CA, are as follows:

Alejandro testified that a walk-in confidential informant appeared in their office and reported that a certain alias Salim was engaged in illegal drug activities and operated in Muntinlupa, Alabang. She called her team leader and an anti-buy (sic) bust operation was coordinated. On August 21, 2008, their team leader conducted a briefing on the buy-bust operation. Alejandro was assigned as the poseur buyer and was given two genuine five hundred peso bills which she marked with her initials MCA as buy bust money. The two five hundred peso bills were placed on top of boodle money, folded and tied together and placed in a white envelope.

Thereafter, they went to Metropolis [Starmall], Alabang to meet with alias Salim. The confidential informant introduced Alejandro to alias Salim and she told him that she wanted to buy shabu. Alias Salim, who was later identified as Tomawis, said that he wanted to see the money first so she showed him the money. He told her that he will get the shabu somewhere and will meet her in the food court. After ten to fifteen minutes, Tomawis returned and they simultaneously exchanged the money for the shabu. After getting the shabu, Alejandro removed her jacket which was their pre-arranged signal. Immediate back up came to arrest Tomawis.

A commotion occurred during the arrest because bystanders inside the food court wanted to help Tomawis who shouted "Tulungan niyo ako papatayin nila ako." They were not able to put markings on the evidence in the vicinity because of the commotion. After Tomawis was arrested, he was read of (sic) his constitutional rights and brought together with the evidence to Brgy. Pinyahan, Quezon City.

Upon reaching Brgy. Pinyahan, they immediately conducted the inventory which was done before the barangay officials of the said barangay. Alejandro handed the seized item to Alfonso Romano who was the inventory officer, but she was present during the inventory process.

Lacap corroborated the testimony of Alejandro. x x x

[Burce] testified that he was a kagawad of Brgy. Pinyahan, Quezon City and that he was called to be present during the inventory of evidence acquired from a buy bust operation. When he reached the office, the confiscated items were placed on top of the table. They asked Tomawis if the items were recovered from him, to which he assented to. The same was corroborated by Gaffud.[11]

Version of the Defense

The defense's version of events, as summarized by the CA, is as follows:

For the defense, Tomawis testified that he was with his mother in Starmall-Alabang when they were accosted by two men. One of them wrung his neck and he could not breathe. His mother tried to help him but was unable to do so. When he was trying to get away from the man holding him, the other man punched his stomach and grabbed his cellular phone. A seller in Starmall-Alabang, who knew him, tried to help him but was unable to do so because the two men brought out their guns. He was brought out to the parking lot and into a vehicle where his hands were handcuffed and his wallet containing P13,500.00 was taken.

There were six men in the vehicle, none of which he knew. The van stopped in front of the mall, and a man peeped inside and said "bro, hindi yan iyong subject." One of them inside the van laughed and replied "pare-parehas lang ang mga muslim." They stopped by a toll gate where two policemen carrying guns arrived. One of them said "pare, ibaba mo na muna yan kausapin mo." The men got out and talked for a few minutes and when they returned, said, "pare, panindigan na lang natin na yan iyong subject."

Tomawis was told that in exchange of his money, he will be released. When he asked what his violation was, they answered that it was because he resisted.

He later found out that he was brought to the Philippine Drug Enforcement Agency (PDEA) Office where he was again punched in the stomach. He was told to call his relatives so he called his mother. He was brought to Brgy. Pinyahan where he was ordered to point to the money and something wrapped in plastic. He did not complain about the illegal arrest and taking of his wallet to the barangay officials because he was afraid. He

was photographed and then brought back to the PDEA Office.

In the PDEA Office, his wife and mother told him that he will be charged with an illegal drug related case. He denied the allegations and said that he was being falsely charged because the PDEA officers knew he was selling cellular phones inside the mall. He cannot think of any other motive why the PDEA officers would file a case against him. His urine was tested and yielded a negative result. Tomawis's mother corroborated his testimony.[12]

The Ruling of the RTC

On January 29, 2014, the RTC, Branch 204, Muntinlupa City, rendered judgment[13] convicting Tomawis of violation of Section 5 of RA 9165 and sentencing him to life imprisonment and to pay a fine of P500,000.00.

The trial court gave full credence to the testimony of the prosecution witnesses on the reason that they enjoyed the presumption of regularity in the performance of their official functions. The RTC also held that the prosecution was able to preserve the integrity of the seized drugs. The RTC further ruled that the conduct of the inventory and photographing was justifiably done in a different place because of the commotion that ensued in the place of arrest. The defense proffered by Tomawis being a mere denial, cannot prevail over the positive assertions of the arresting officers.[14]

The Ruling of the CA

Undaunted, Tomawis elevated the case to the CA.[15] He argued that the prosecution failed to prove the identity and integrity of the alleged seized drugs due to the following irregularities in the conduct of the buy- bust operation: (1) failure to present the testimony of IO1 Romano Alfonso (IO1 Alfonso), who received the shabu from IO1 Alejandro; (2) failure to immediately mark the shabu at the time of seizure and initial custody; and (3) the conduct of the inventory and marking at the barangay hall of Brgy. Pinyahan, Quezon City.[16]

The CA affirmed the judgment of the RTC in toto.[17]

The appellate court held that the prosecution was able to prove all the elements of the crime of sale of illegal drugs as punished under Section 5, RA 9165. The CA held that IO1 Alejandro's testimony, which was corroborated by IO1 Lacap and supported by documentary evidence, rendered a clear and complete narration of the details of the buy-bust operation. The CA also held that the chain of custody was sufficiently established. Absent any showing of ill-motive or bad faith on the part of the buy-bust team, the presumption of regularity in the performance of official functions prevails.[18]

Thus, Tomawis filed his Notice of Appeal[19] of the CA Decision on June 28, 2016.

Issue

Whether or not Tomawis' guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Tomawis as the prosecution utterly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165 and for their failure to establish the chain of custody of the seized drugs.

For a successful prosecution for the crime of illegal sale of drugs under Section 5 of RA 9165, the following must be proven: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold

and the payment for it.[20] In cases involving dangerous drugs, the drug itself constitutes the corpus delicti of the offense.[21] Thus, it is of paramount importance that the prosecution prove that the identity and integrity of the seized drugs are preserved. Each link in the chain of custody of the seized drugs must be established.

The requirements of paragraph 1, Section 21, Article II of RA 9165

Section 21, Article II of RA 9165 outlines the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. RA 9165 was amended by RA 10640[22] which imposed less stringent requirements in the procedure. The amendment was approved on July 15, 2014. As the alleged crime in this case was committed on August 21, 2008, the original version of Section 21 is applicable:

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[.]

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) filled in the details as to place of inventory and added a saving clause in case of non-compliance with the requirements under justifiable grounds, thus:

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

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

Parsed, the above provisions impose the following requirements in the manner of handling and inventory, time, witnesses, and of place after the arrest of the accused and seizure of the dangerous drugs:

1. The initial custody requirements must be done immediately after seizure or confiscation;
2. The physical inventory and photographing must be done in the presence of:
 - the accused or his representative or counsel;
 - a representative from the media;
 - a representative from the DOJ; and
 - any elected public official.
3. The conduct of the physical inventory and photograph shall be done at the:
 - place where the search warrant is served; or
 - at the nearest police station; or
 - nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

All the above requirements must be complied with for a successful prosecution for the crime of illegal sale of drugs under Section 5 of RA 9165. Any deviation in the mandatory procedure must be satisfactorily justified by the buy-bust team. Under Section 21 of the IRR, the Court may allow deviation from the procedure only where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizures and custody over the confiscated items shall not be rendered void and invalid.[23]

Jurisprudence states that the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[24] For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[25]

In this case, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug - which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of the accused.

The buy-bust team failed to comply with the three-witness rule

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. In addition, the inventory must be done in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension-a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

The buy-bust team in this case utterly failed to comply with these requirements. To start, the conduct of the inventory in this case was not conducted immediately at the place of arrest but at the barangay hall of Pinyahan, Quezon City. As explained by the buy-bust team of the PDEA, IO1 Alejandro and IO1 Lacap, they could not conduct the inventory at Starmall, Alabang, because a commotion ensued as bystanders in the food court tried to assist Tomawis who shouted for help. Evidently, this happened because the buy-bust operation was conducted in a shopping mall.

While the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension, is not dispensed with. The reason is simple, it is at the time of arrest - or at the time of the drugs' "seizure and confiscation" - that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

There are police stations closer to Starmall, Alabang, in Muntinlupa City and the office of the PDEA is also in Pinyahan, Quezon City. And yet, the inventory was conducted in the barangay hall of Pinyahan, Quezon City - which is not one of the allowed alternative places provided under Section 21 of the IRR.

More importantly, there was no compliance with the three-witness rule. There were no witnesses from the DOJ or the media. Only two witnesses who were elected barangay officials were present. It thus becomes evident that the buy-bust team did not prepare or bring with them any of the required witnesses at or near the place of the buy-bust operation and the witnesses were a mere afterthought. Based on the testimonies of barangay councilors Burce and Gaffud, they were not present during the seizure of the drugs. They were only called to go to the barangay hall of Pinyahan, Quezon City - after the arrest and seizure that had been done in Starmall, Alabang - to "witness" the inventory made by the PDEA at the barangay hall.

Barangay councilor Burce testified:

[Cross-examination of barangay councilor Burce by Atty. Jaime Felicen (Atty. Felicen), counsel for Tomawis]

[Clarificatory questions by the Court:]

[Q] -

Will you please tell us how you came to sign the Certificate of Inventory?

A -

Your Honor, I just like to inform you that I was not part in the Operation of PDEA but according to the Book of PDEA any Government or Local Officials that they have a responsibility to sign as witness in the Inventory.

[Q] -

How were you called by PDEA to sign the inventory?

A -

I was at the Basketball Court your Honor, when they called me.

[Q] -

What did they inform you?

A -

That they conducted a buy-bust operation your honor and they presented to us the evidence they recovered and

the person who were arrested.

[Q] -

Who were present during the Inventory of the drug evidence, aside from you?

A -

Kagawad Minda Gaffud, your Honor.

[Q] -

Who else?

A -

The PDEA, your Honor.

x x x x

[Q] -

How about the accused was he present during the Inventory?

A -

Yes, your Honor.

x x x x

ATTY. FELICEN:

[Q] -

Who was in possession of the items brought to the Brgy. when it was Inventoried?

A -

When I reached the office, the confiscated items were already placed on the top of the table and then the items were presented there and then we even asked the accused if the items were recovered from him, sir.

x x x x

[Q] -

So, what you did is you just affixed your signature in this Certificate of Inventory without knowing where the items came from?

A -

I was informed by the PDEA Operatives sir, that the items were recovered from a buy-bust operation conducted at the Metropolis.

Q -

Aside from the information from the PDEA you have no other personal knowledge?

A -

Yes, sir.

Q -

You even do not know who was the person who put those items on top of the table?

A -

No, sir.[26] (Emphasis supplied)

Barangay councilor Gaffud testified similarly:

[Cross-examination of barangay councilor Gaffud by Atty. Felicen]

Q -

Who in particular told you to witness the Inventory?

A -

I was called by one of the Brgy. Tanod and I was informed that the PDEA Operatives arrived at the office sir, and they need one Brgy. Official to witness the Inventory, sir.

Q -

So, when you were about to witness the inventory, you just saw the items to be inventory (sic) at that time on top of the table also?

A -

The items were not yet at the table, when I arrived, they got the items from one of the PDEA Operatives, sir.

Q -

From where did that member of the PDEA got (sic) the items?

A -

They were holding a plastic sir, and they brought out the content of the plastic sir, and they place it on top of the table, sir.[27] (Emphasis supplied)

From the above testimonies, it can be gleaned that barangay councilors Burce and Gaffud were not present near to or at the place of arrest. They were merely called to witness the inventory at the Pinyahan barangay hall and then the drugs were shown to them by the PDEA agents. They did not even have prior knowledge of the buy-bust operation.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, [28] without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.[29]

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest.

It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of

seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished - does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."

The prosecution failed to establish the chain of custody of the seized drugs.

As stated earlier, there is a saving clause in Section 21 of the IRR, which is the provision that states: "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 and custody over said items." [30]

In *People v. Alviz*, [31] the Court held that the integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same is duly established.

Chain of custody is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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[.] (Emphasis supplied)

In the present case, there are gaps in the chain of custody of the seized drugs which creates reasonable doubt as to the identity and integrity thereof.

There are glaring inconsistencies in the testimonies of the buy-bust team. It is unclear as to who actually recovered the seized drugs from Tomawis and who held custody of the drugs from the place of the arrest in transit to Brgy. Pinyahan. There is also no testimony as to who held the drugs from the time of inventory at Brgy. Pinyahan to the PDEA office; from the PDEA office until it was delivered to the laboratory; and until its presentation in court as evidence of the corpus delicti.

The poseur-buyer, IO1 Alejandro, testified as follows:

[Direct examination of IO1 Alejandro by Fiscal Romeo B. Senson (Fiscal Senson)]

Q:

And after the accused went back after ten minutes, what happened next?

A:

He asked me the money again and then I said, where is the shabu? When he showed me the shabuI gave him the money and he gave me the shabu.

Q:

And after that he gave you the shabu what happened next?

A:

I already gave my pre-arranged signal, your Honor.

Q:

And after you gave the pre-arranged signal, what happened next, Ms. Witness?

A:

My immediate back-up came to arrest Mr. Basher Tomawis, sir.

Q:

And who is this back-up, Ms. Witness?

A:

IO1 Beltran Lacap, Jr.

Q:

And after the accused was arrested, what happened next?

A:

We stated his constitutional rights, you Honor.

Q:

And after the accused was apprehended, what did you do next, Ms. Witness?

A:

We were not able to put markings on the evidence in the vicinity, your Honor, because of the commotion happened when we arrested the accused Mr. Basher Tomawis, your Honor.

Q:

What commotion happened, Ms. Witness?

A:

The bystanders inside the food court, your Honor, inside the mall, wanted to help Mr. Basher Tomawis.

Q:

And what did you do if any?

A:

Our Team Leader immediately ordered us to vacate the area, your Honor, so that we can avoid any incident that may happen inside the mall, sir.

x x x x

Q:

And after that, what happened next?

A:

We brought the said evidence to Brgy. Pinyahan, your Honor, to properly make the inventory of the seized evidence, your Honor.

Q:

And where is this Brgy. Pinyahan?

A:

At the V. Luna, Quezon City, your Honor.

Q:

And was this inventory reduced into writing?

A:

Yes, in the case folder, your Honor.

x x x x

Q:

Ms. Witness in this inventory you made mention of plastic containing crystalline substance suspected to be shabu. What happened to this item, Ms. Witness?

A:

We brought it to the PDEA Laboratory, sir.

Q:

And who brought this item to the laboratory, Ms. Witness?

A:

I was the one who brought this, sir.

x x x x

Q:

If I will show you the item that you brought to the laboratory for examination, would you be able to identify it, Ms. Witness?

A:

Yes, sir.

Q:

Will you please tell us what identifying marks did you put it if any?

A:

My initial, your Honor, the initial MCA and the initial of Beltran Lacap, Jr., BTL.

x x x x

Q:

Will you please explain to us, Ms. Witness, why did you not affix your own signature in the inventory marked as Exhibit "F"?

A:

The reason why, your Honor, because I was the poseur buyer and my colleague was assigned as Inventory Officer. He is the Inventory Officer in our office, your Honor. All the seized items for inventory after brought to the barangay and before bringing the said items to the PDEA Laboratory, IO1 Romano Alfonso was the one who kept them your Honor.[32] (Emphasis and underscoring supplied)

IO1 Alejandro testified that she received the drugs from Tomawis and that she submitted the same to the laboratory for testing. The inventory was conducted by the assigned Inventory Officer, IO1 Alfonso. However, there is no testimony as to the movement of the drugs from IO1 Alejandro to IO1 Alfonso, and supposedly back again from IO1 Alfonso to IO1 Alejandro for the submission of the seized drugs to the crime laboratory.

Meanwhile, IO1 Lacap, also claimed to have received the seized drugs from Tomawis. He also contradicted IO1 Alejandro's testimony as he said that IO1 Alfonso was the one who had custody of the drugs prior to the delivery to the crime laboratory.

IO1 Lacap, testified as follows:

[Direct examination of IO1 Lacap by Fiscal Senson]

Q:

What was recovered from the accused if any?

A:

A maroon pouch, sir, with folka (sic) dots and inside is a suspected shabu placed in a knot tied plastic sachet, sir.

Q:

And who recovered this pouch, Mr. Witness?

A:

I was, sir.

Q:

If will be shown to you again this pouch, can you identify it?

A:

Yes, sir.

Q:

And from whom did you recover this pouch?

A:

The pouch belonged to Alejandro, sir.

Q:

The pouch was recovered by Agent Alejandro. What did you recover if any, Mr. Witness?

A:

The buy bust money placed in a white envelope, sir.

x x x x

Q:

How come you did not have time to make the inventory in the area?

A:

At that time, sir, the vendors around who knew the accused tried to help the accused, sir. There was a little scuffle, sir.

x x x x

Q:

Where did you go Mr. Witness?

A:

To the National Headquarters, PDEA, sir.

Q:

When arrived (sic) thereat, what happened next?

A:

Before that we went to barangay in Quezon City for the purpose of inventory of evidence.

Q:

And what happened at the barangay office?

A:

Kagawad Gaffud and Kagawad Burce witnessed the inventory, sir.[33] (Emphasis supplied)

x x x x

[Cross-examination of IO1 Lacap by Atty. Felicen]

Q:

And so it was Alejandro who was in the possession of the item shabu allegedly recovered from the accused at the Metropolis to Brgy[.] Pinyahan?

A:

Yes, sir.

Q:

And surprisingly, however, the officer who conducted the inventory was IO1 Romano?

A:

Yes, sir.

Q:

IO1 Romano was not part of the actual operation inside the Metropolis?

A:

No, sir.

Q:

Was he inside the [M]etropolis?

A:

He is also a member of the support team.

Q:

Was he inside?

A:

Yes, sir.

Q:

Meaning, that IO1 Alejandro turn-over (sic) the item to IO1 Romano?

A:

No, sir, until we brought it to the crime laboratory for examination.

Q:

So despite that Mabel Alejandro was the one who personally allegedly recovered the item from the suspect she did not sign the inventory including you and IO1 Romano?

A:

Yes, sir. We signed as witness, sir, but Agent Romano Alfonso was designated as Inventory Officer.

Q:

Are you sure that he signed the inventory or you are not sure?

A:

That is what I know.

Q:

The truth is that you did not witness the signing of the inventory, is that correct?

A:

Only Agent Romano, sir.[34] (Emphasis and underscoring supplied)

Thus, based on the above testimonies, only the following circumstances were established: the drugs were seized from Tomawis at Starman, Alabang; the inventory and photographing were not conducted there because a commotion ensued when Tomawis was arrested; the buy- bust team brought Tomawis to the barangay hall of Brgy. Pinyahan; the inventory was conducted by the designated Inventory Officer, IO1 Alfonso; barangay councilors Burce and Gaffud were present at the barangay hall; after the inventory, the buy-bust team, together with Tomawis, proceeded to the PDEA office; IO1 Alejandro delivered the seized drugs to the laboratory for testing.

There are lacking information and glaring inconsistencies in the statements of IO1 Alejandro and IO1 Lacap. IO1 Alejandro testified that only she handled the seized drug. However, IO1 Lacap mentioned that he also recovered the seized drug from IO1 Alejandro. IO1 Alejandro testified that she handed the seized drug to IO1 Alfonso for inventory and he was the one who kept the seized drug since it was brought to the barangay hall and before bringing it to PDEA laboratory; but IO1 Lacap also testified that IO1 Alejandro was the one who kept the drugs until they were delivered to the laboratory.

There are unexplained gaps in the custody of the seized drugs. The transfer and movement of the seized drugs between IO1 Alejandro, IO1 Lacap, and IO1 Alfonso was not established. It is unclear as to who held custody of the seized drugs from the place of arrest in Starman, Alabang to Brgy. Pinyahan, Quezon City and from Brgy. Pinyahan, Quezon City to the PDEA office. It was not clarified as to how and when the seized drugs were returned to IO1 Alejandro after the inventory was conducted by IO1 Alfonso. There was also no testimony as to who received the seized drugs from IO1 Alejandro at the laboratory, and to whom they were given after the testing was conducted.

During pre-trial, the delivery by IO1 Alejandro to the laboratory was stipulated upon. However, there was no evidence presented as to who at the laboratory received the seized drugs from IO1 Alejandro and as to who held custody thereof after the examination was conducted.

Thus, the prosecution was unable to establish the unbroken chain of custody. The uncertainties and inconsistencies in the testimony of the buy- bust team and lack of information at specific stages of the seizure, custody, and examination of the seized drugs creates doubt as to the identity and integrity thereof. Each link in the chain of custody must be proved by the prosecution and cannot be conveniently explained by the invocation of presumption of regularity.

The importance of establishing the chain of custody in drugs cases was explained in *Mallillin v. People*[35]:

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise-in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only .to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[36]

As the drug itself is the corpus delicti in drugs cases, it is of utmost importance that there be no doubt or uncertainty as to its identity and integrity.

Other breaches of procedure in the handling, marking, and photographing of the seized drugs

The buy-bust team also failed to take photographs of the seized drugs. The only photo, submitted as Exhibit "O" for the prosecution, was a black and white photocopy of pictures of Tomawis and barangay councilors Burce and Gaffud at the barangay hall. The law requires photographs of the seized drug itself and not of the accused and the witnesses.

It was also not established where the marking was done by IO1 Alejandro. She only mentioned that they were not able to mark the seized drugs at the place of arrest due to the commotion caused thereat. This is excusable due to the occurrence of the commotion. However, it is not clear if the marking was done at the barangay hall of Pinyahan, Quezon City or at the PDEA office. Neither was it specified if the marking was done in the presence of the accused and the witnesses.

Inconsistency in description of seized drugs

Notably, the Inventory of Seized Evidence[37] prepared by IO1 Alfonso merely describes the seized drugs as "1 knot tied plastic containing crystalline substance suspected to be 'shabu'," without reference to any markings made thereon. The weight of the seized drug is also not specified.

In addition, there is no mention of a maroon pouch,[38] which is inconsistent with the testimony of IO1 Alejandro and Lacap who had testified that the seized drugs were inside a pouch. The maroon pouch is mentioned again only in the Memorandum[39] from the PDEA referring the seized drugs for testing and in the Chemistry Report.[40] There is also no testimony from any of the witnesses, barangay councilors Burce and Gaffud, as to the condition of the seized drugs during the inventory at the barangay hall. Gaffud testified that the buy-bust team was holding a plastic bag without mention of a maroon pouch or any markings thereon.

At the risk of repetition, the seized drug is the corpus delicti of the crime itself. Thus, it is crucial for the prosecution to prove the identity and integrity of the seized drugs. The apprehending officers must account for each and every item that was seized from the accused. The process of the inventory, marking, and photograph of the seized drugs imposes another layer of protection to ensure that the substance seized from the accused is the same one that is presented and submitted in evidence. The failure of the apprehending team to comply with these requirements greatly diminished the evidentiary value of the seized drugs.

The presumption of innocence of the accused vis-a-vis the presumption of regularity in performance of official duties

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[41] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged.[42]

On the other hand, public officers generally enjoy the presumption of regularity in the performance of official functions. This is a disputable presumption provided under Section 3(m)[43] of Rule 131 of the Rules of Court. The presumption of regularity in the performance of duties can be overturned only if evidence is presented to prove that the public officers were not properly performing their duty or they were inspired by improper motive. In this case, both the RTC and CA used the presumption of regularity in giving full faith and credence to the testimonies of the buy--bust team and to justify the deviation from the procedure.

However, in drugs cases, more stringent standards must be used for the presumption of regularity to apply. The presumption should arise only when there is a showing that the apprehending officer/buy-bust team followed the requirements of Section 21, or when the saving clause may be properly applied. Gaps in the chain of custody cannot be filled in by the mere invocation of the presumption of regularity.

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[44] In *People v. Enriquez*,[45] the Court held:

x x x [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the non-compliance is an irregularity, a red flag, that casts reasonable doubt on the identity of the corpus delicti.[46] (Emphasis supplied)

This means that even in the event that the presumption of regularity may stand, it will not be stronger than the presumption of innocence in favor of the accused.[47] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[48] Trial courts have been directed by the Court to apply this differentiation.[49]

In this case, the presumption of regularity cannot be applied due to the glaring disregard of the established procedure under Section 21 of RA 9165 and its IRR, committed by the buy-bust team.

All told, the prosecution failed to prove the corpus delicti of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. Thus, the prosecution was not able to overcome the presumption of innocence of Tomawis.

As a final note, the Court reiterates the reminder it has given in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection that innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x[50]

In the same vein, the Court likewise reiterates:

In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the corpus delicti and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the record/s of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[51]

WHEREFORE, premises considered, the Decision dated June 6, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06662 is REVERSED and SET ASIDE. Accused-appellant Basher Tomawis y Ali is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within

five (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

Carpio,[*] Acting C. J., (Chairperson), Peralta, Perlas-Bernabe, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] *People v. Pagaura*, 334 Phil. 683, 690 (1997); *People v. Salangga*, 304 Phil. 571, 589 (1994); italics supplied.

[2] *Rollo*, pp. 17-19.

[3] *Id.* at 2-16. Penned by Associate Justice Noel G. Tijam (now a Member of this Court) and concurred in by Associate Justices Francisco B. Acosta and Eduardo B. Peralta, Jr.

[4] *CA rollo*, pp. 57-70. Penned by Presiding Judge Juanita T. Guerrero.

[5] 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.

[6] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES (2002).

[7] *Records*, pp. 2-4.

[8] *Id.* at 2-3.

[9] *Id.* at 44-46.

[10] Pre-Trial Order dated August 20, 2009, *id.* at 118 to 119-A.

[11] *Rollo*, pp. 4-6.

[12] *Id.* at 6-7.

[13] *Supra* note 4.

[14] *CA rollo*, pp. 66-69.

[15] Notice of Appeal dated February 4, 2014, *records*, p. 389.

[16] See Brief for the Accused-Appellant, *CA rollo*, pp. 29-56.

[17] *CA Decision* dated June 6, 2016, *supra* note 3.

[18] *Id.* at 9-15.

[19] *Supra* note 2.

[20] *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 251.

[21] *People v. Suan*, 627 Phil. 174, 188 (2010).

[22] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

[23] See *People v. Cayas*, 789 Phil. 70, 79-80 (2016).

[24] *Gamboa v. People*, G.R. No. 220333, November 14, 2016, 808 SCRA 624, 637, citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[25] *Id.* at 637-638.

[26] TSN, June 20, 2012, pp. 5-8.

[27] *Id.* at 13.

[28] 736 Phil. 749 (2014).

[29] *Id.* at 764.

[30] IRR of RA 9165, Sec. 21(a).

[31] 703 Phil. 58, 73 (2013).

[32] TSN, September 23, 2009, pp. 9-13, 20.

[33] TSN, November 4, 2010, pp. 10-13.

[34] TSN, December 8, 2010, pp. 6-7.

[35] 576 Phil. 576 (2008).

[36] *Id.* at 588-589.

[37] Exhibit "F," records p. 18.

[38] Described as "red polka dots pouch" in the Request for Laboratory Examination (Exhibit "H") and "gold and red with white polka dots pouch" in the Chemistry Report (Exhibit "I"), *id.* at 20-21.

[39] Request for Laboratory Examination, Exhibit "H," *id.* at 20.

[40] Exhibit "I," *id.* at 21.

[41] See 1987 CONSTITUTION, Art. III, Sec. 14(2) which provides:

Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.

[42] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[43] SEC. 3. Disputable presumptions. - x x x

x x x x

(m) That official duty has been regularly performed[.]

[44] See *People v. Mendoza*, *supra* note 28, at 770.

[45] 718 Phil. 352 (2013).

[46] *Id.* at 366.

[47] See *People v. Mendoza*, *supra* note 28, at 770.

[48] *Id.*

[49] *Id.*

[50] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[51] *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

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