

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. DONNA CLAIRE DE VERA AND ABIGAIL CACAL Y VALIENTE, ACCUSED-APPELLANTS.

G.R. No. 229364. October 16, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This appeal seeks to reverse the Decision[1] dated January 04, 2016 of the Court of Appeals in CA-G.R.CR-HC No. 06822 affirming the conviction of appellants Donna Claire De Vera and Abigail Cacal y Valiente for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).[2]

The Proceedings Before the Trial Court

The Charge

On October 14, 2011, an Amended Information was filed against appellants, viz:

"That on or about the 9th day of October 2011, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping with one another did then and there willfully, unlawfully and feloniously sell and deliver to a poseur buyer (one) piece plastic sachet containing Methamphetamine Hydrochloride, locally known as "Shabu" with an aggregate weight of 0.0415 gram, a dangerous drug, without any license or authority, in violation of the aforesaid law.

CONTRARY TO LAW.[3]"

The case was raffled to the Regional Trial Court - Branch 13, Laoag City.

On arraignment, appellants pleaded not guilty.

During the trial, PO1 Jackson Bannawagan Sugayen, SPO4 Loreto Ancheta,[4] and SPO4 Rovimmanuel Balolong testified for the prosecution.

The testimonies of investigating officer SPO2 Teodoro Flojo (SPO2 Flojo) and forensic chemist Police Senior Inspector Roanalaine B. Baligod (PS/Insp. Baligod) were dispensed with after the prosecution and the defense stipulated on their participation in the handling of the seized drug.[5]

On the other hand, Roy Constantino, Janet Hernando, Teofilo Bernabe and appellants De Vera and Cacal testified for the defense.

The Prosecution's Version

On October 8, 2011, around 8 o'clock in the evening, SPO4 Balolong of the Intel Operations Section of Laoag City Police Station received a phone call from an informant. The latter reported that a certain Abigail Cacal y

Valiente would sell him shabu on October 9, 2011, in front of Data Center Philippines in Laoag City. SPO4 Balolong agreed to meet the informant around 5 o'clock the following morning. Meantime, SPO4 Balolong alerted PO1 Sugayen, SPO1 Arcel Agbayani (SPO1 Agbayani), PO2 Arnel Saclayan (PO2 Saclayan) of the buy-bust operation on the same day.[6]

Around 4:30 in the morning of October 9, 2011, the informant went to fetch SPO4 Balolong. Thereafter, they went to Laoag City Police Station for briefing together with the other members of the buy-bust team. It was discussed that the buy-bust operation will be conducted at the Data Center Philippines in Brgy. 8, A.G. Tupaz Street, Laoag City. PO1 Sugayen was designated as poseur-buyer and given the marked P1000.00 bill as buy-bust money. Team leader SPO4 Balolong, SPO1 Agbayani, PO2 Saclayan and PO1 Rizal Almondia (PO1 Almondia) were designated as back-up. It was agreed that once the sale was consummated, PO1 Sugayen will make a phone call to SPO4 Balolong.[7]

The pre-operation report was recorded in the police blotter. The team coordinated with the Philippine Drug Enforcement Agency (PDEA).[8]

The team together with the informant then headed to A.G. Tupaz Street. PO1 Sugayen and the informant rode a tricycle while the rest of the team took SPO4 Balolong's car. When they got to A.G. Tupaz Street, the team parked in front of the Civil Security Unit at the Laoag City Hall around two (2) blocks away from Data Center Philippines. PO1 Sugayen and the informant, on the other hand, positioned themselves in front of Data Center Philippines. The informant immediately informed Cacal of their presence in the area.[9]

After around fifteen (15) minutes, Cacal came. The informant introduced PO1 Sugayen to Cacal as the buyer. Cacal informed them he would text someone to bring in the item. After about thirty (30) minutes, a woman on board a motorcycle came. She was later on identified as appellant Donna Claire De Vera. She alighted from the motorcycle, removed her helmet, and handed a plastic sachet to Cacal. The latter gave the item to PO1 Sugayen, who immediately slid it into his pocket and gave De Vera the buy-bust money as payment. PO1 Sugayen then called SPO4 Balolong signifying that the sale had been completed. As the team was closing in, Cacal panicked. PO1 Sugayen was able to grab him though. Thereupon, PO2 Saclayan and PO1 Almondia helped out and handcuffed Cacal. SPO4 Balolong and SPO1 Agbayani, on the other hand, took care of De Vera. They recovered from her the buy-bust money. Both appellants were informed of their rights and were taken to the Laoag City Police Station.[10]

At the police station, the post operation events were registered in the police blotter.[11] PO1 Sugayen marked the plastic sachet with his initials "JBS"[12] and took pictures of the confiscated items.[13] He turned over the items to SPO4 Ancheta, the evidence custodian. SPO4 Ancheta did the inventory.[14]

Police Inspector Eduardo C. Santos prepared the request for laboratory examination dated October 9, 2011. The confiscated item was then forwarded to the Ilocos Norte Provincial Crime Laboratory Office.[15]

On October 9, 2011, around 1:30 in the afternoon, SPO2 Flojo of the Laoag City Police Station received the plastic sachet marked "JBS." [16] He turned it over to forensic chemist PS/Insp. Baligod at the Ilocos Norte Provincial Crime Laboratory Office. In her Chemistry Report No. D-051-2011 dated October 9, 2011, PS/Insp. Baligod certified that the specimen confiscated from appellants yielded positive results for methamphetamine hydrochloride, a dangerous drug.[17]

The prosecution submitted the following evidence: Joint Affidavit of Arrest; Coordination Form; Extract Copy of Police Blotter with Entry No. 141639; Extract Copy of Police Blotter with Entry No. 141642; Inventory of Items; Letter Request for Laboratory Examination; Initial Laboratory Chemical Report No. D-051-2011; Final

Laboratory Chemical Report No. D-051-2011; Pictures of appellants and confiscated items; One (1) piece transparent plastic sachet with contents; Photocopy of the crime laboratory logbook; Photocopy of P1,000.00 bill marked money; and Acknowledgment Receipt dated November 22, 2011.[18]

The Defense's Version

Appellant Cacal testified that on October 8, 2011, he was in Laoag City to follow up an employment offer at a live-band bar. He stayed at his friends' boarding house on Bacarra Road. In the morning of October 9, 2011, he received a text message from a certain Baldo, whom he had known for about two (2) months. He agreed to accompany Baldo to meet up with his two (2) friends. They boarded a motorcycle and headed to the RCJ bus terminal. Five (5) minutes later, two (2) men alighted from a tricycle. They were PO1 Sugayen and Bong Marin. They both went to eat at a carinderia in front of the Data Center Philippines. While eating, both Marin and Baldo received calls and text messages. They stepped out of the carinderia, leaving him and PO1 Sugayen behind. After a while, he and PO1 Sugayen also left. They sat in front of a computer shop and talked about his previous work in Taiwan.[19]

After sometime, PO1 Sugayen brought out his phone and started texting. Suddenly, a car stopped in front of them. From afar, he saw Baldo and Marin running away. SPO4 Balolong and SPO1 Agbayani stepped out of the car and pointed their guns on him. PO2 Saclayan and two (2) other police officers arrived. He asked them if he did something wrong but SPO1 Agbayani just frisked him. He resisted the frisk and asked them again what crime he committed and if they had a search warrant. They told him that since he talked too much, they were bringing him to the police station for further investigation.[20] He continuously resisted but the police officers kicked, boxed, and mauled him. He asked them to stop otherwise he would charge them with police brutality. But they only continued to maul him. He fought back hitting SPO4 Balolong. The other police officers pinned him down on the ground, handcuffed him, and boarded him into a tricycle with PO2 Saclayan.[21]

At the Laoag City Police Station, SPO4 Balolong came, together with a crying woman who was later identified as De Vera. When asked if he knew De Vera, he replied in the negative. After a short interrogation, he was thrown into a prison cell.[22]

The following morning around 2 and 3 o'clock, SPO4 Ancheta and two (2) other police officers brought him and De Vera to Camp Valentin S. Juan, Laoag City. A small plastic sachet was presented to them and SPO4 Ancheta told him it was found in his possession. Immediately, thereafter, he and De Vera were subjected to urinalysis before they were taken back to the police station.[23] He was again detained there. Around 4 and 5 o'clock in the afternoon, PO1 Sugayen visited and promised to help him because he knew he was innocent. Roy Constantino, a detainee in the same cell heard their conversation.[24]

Roy Constantino corroborated Cacal's testimony. He testified that on October 9, 2011, PO1 Sugayen visited Cacal in his prison cell. He heard him apologizing to Cacal for the frame-up and illegal arrest.[25]

Appellant De Vera, on the other hand, testified that in the morning of October 9, 2011, she was in the house of Teofilo Bernabe in Laoag City where she worked as babysitter and household helper.[26] She received a call from her aunt Racquel Fernandez. The latter asked her to pick up from Janet Hernando P1,000.00 which Hernando owed to her aunt. She obliged and by 9:25 in the morning, she left to meet Hernando in front of the Vigare Clinic located at the west side of Data Center Philippines and the RCJ bus terminal. Five (5) minutes later, Hernando came. She handed her the P1,000.00 which she slid into her pocket.[27] When she was about to leave, she heard a commotion and suddenly a car stopped in front of her. Two (2) men alighted from the vehicle. She later learned that they were SPO4 Balolong and SPO1 Agbayani. They approached her, pushed her against the wall, and boxed her head. SPO4 Balolong frisked her and took the P1,000.00 from her pocket. They then boarded her into a car

and took her to the Laoag City Police Station. She was detained in one of the offices there. She saw Cacal being interrogated in the same office. After a while, she was informed that there were drug charges against her.[28]

Janet Hernando corroborated De Vera's story. The former testified she knew De Vera as the niece of Racquel Fernandez whom she owed P3,000.00. Upon Fernandez' instruction she gave her final payment of P1,000.00 to De Vera on October 9, 2011 in front of the Vigare Clinic.[29]

Teofilo Bernabe also testified that De Vera worked for him as household help for five (5) years. On October 9, 2011, De Vera received a phone call from her aunt Racquel Fernandez instructing her to collect money from Janet Hernando. De Vera asked permission from him to do the errand so he allowed her to leave and use his motorcycle.[30]

The defense offered the following evidence: Joint Affidavit of Arresting Officers; Extract Copy of Police Blotter No. 141642 dated October 9, 2011; Letter Request for Laboratory Examination; Pre-Operational Report; Initial Laboratory Report D-051-2011; and Final Laboratory Report D-051-2011.[31]

The Trial Court's Ruling

By Decision dated March 28, 2014,[32] the trial court convicted appellants as charged, thus:

WHEREFORE, judgment is hereby rendered finding accused Donna Claire de Vera and Abigail Cacal GUILTY as charged of illegal sale of shabu in conspiracy with each other and are therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The contraband subject hereof is hereby confiscated, the same to be disposed of as the law prescribes.

SO ORDERED.

The Proceedings Before the Court of Appeals

On appeal, appellants faulted the trial court for finding them guilty as charged. They claimed that the alleged incredulity of the prosecution's evidence, the procedural lapses committed during the buy-bust operation, and the prosecution's failure to prove the identity and integrity of the corpus delicti could not have established their guilt beyond reasonable doubt.[33]

On the other hand, the Office of the Solicitor General (OSG) countered in the main: a) the prosecution had established the elements of illegal sale of dangerous drugs; b) the identity and integrity of the corpus delicti were established by evidence; and c) appellants' denial and frame-up were unsubstantiated.[34]

The Court of Appeals' Ruling

By Decision dated January 04, 2016,[35] the Court of Appeals affirmed. It ruled that the prosecution had adequately and satisfactorily proved the elements of illegal sale of shabu. The chain of custody was substantially complied with and the corpus delicti was established with certainty. The absence of the designated witnesses under Section 21 of RA 9165 was not fatal to the prosecution's case so long as the integrity and evidentiary value of the illegal drugs were preserved. Appellants failed to adduce sufficient evidence to substantiate their defenses of denial and frame-up in light of the positive identification of the prosecution witnesses.

The Present Appeal

Appellants now seek affirmative relief from the Court and pray anew for their acquittal.

In compliance with Resolution dated March 29, 2017, both the OSG and appellants[36] manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

The Threshold Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the alleged attendant procedural infirmities relative to the chain of custody?

Ruling

We acquit.

Appellants were charged with violation of Section 5 of RA 9165 or illegal sale of dangerous drugs purportedly committed on October 9, 2011.

Section 21 of RA 9165 provides the procedure to ensure the integrity of the corpus delicti, viz:

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 seized, 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; (emphasis added)

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Its Implementing Rules and Regulations further states:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (emphases added)

In illegal drugs cases, the drug itself constitutes the corpus delicti of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold by the accused is the same substance presented in court.[37]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[38] first, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[39]

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident

or otherwise.[40]

Here, prosecution witness PO1 Sugayen testified:

Q: (Considering) that Officer Balolong is the team leader of this particular operation, Mr. Witness, did you turn over to him the plastic sachet?

A: No, sir.

Q: Did he not check if the plastic sachet contains shabu?

A: No, sir.

Q: Never did you show to your team leader the alleged subject of the buy bust operation?

A: No sir, it was at the police station that he came to see the plastic sachet, sir.

Q: Officer Balolong never bothered to ask you where is the plastic sachet?

A: He asked, sir.

Q: Did you not show to him?

A: It is (in) my pocket (,) sir, I told him, sir.

Q: At that time, Mr. Witness, you did not issue a Receipt of the Property Seized to the accused Abigail Cacal?

A: No, sir.

Q: You did not mark the plastic sachet (?)

COURT: All these for emphasis, Atty. Bareng (.) Because the witness clearly (testified) on direct that after the arrest of the accused, they brought the accused to the police station where the (evidence) were marked.

ATTY. BARENG:

Yes, your Honor.

Q: Upon arresting and seizing the items, Mr. Witness, did you call the barangay officials?

A: No, sir.

Q: Also media personalities and (representatives) of DOJ, you did not call?

A: It's only at the police station that they arrived, sir.

Q: (T)hat there were no photographs taken at the place of arrest?

A: There were no photographs, sir.

Q: What time did you turn over the plastic sachet to SPO4 Loreto Ancheta?

A: I was not able to take note of the time, sir.

Q: Upon confiscation of the plastic sachet, Mr. Witness, you did not put the same in a container?

A: No, sir.

Q: Upon confiscation, you just brought the accused and the seized specimen to the police station?

A: Yes, sir.

Q: No physical inventory that was taken at the place of arrest in the presence of the accused?

A: None, sir.[41] (Emphasis supplied).

PO1 Sugayen's testimony, on its face, bears how the chain of custody had been breached many times over in this case. In fact, all four (4) links were never at any point joined into one (1) unbroken chain. Consider:

First. The marking of the seized drug was not done at the place of arrest immediately after seizure. PO1 Sugayen testified that following appellants' arrest, they proceeded immediately to the Laoag City Police Station. En route the police station, the item remained unmarked. It was clearly exposed to switching, planting, and contamination. Notably, the prosecution never explained why the prescribed procedure for marking was not followed.

A similar circumstance obtained in *People v. Victoria y Tariman*[42] wherein the Court acquitted the accused after the prosecution witnesses admitted that the seized item was not marked at the place of the arrest.

In *People v. Lumaya*[43] the Court stressed that it is important to promptly mark the dangerous drug at the place of arrest because succeeding handlers will use such marking as reference. It operates to set apart as evidence the dangerous drugs from other items the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence.

Second. The requirements of inventory and photograph of the confiscated items were not complied with. PO1 Sugayen admitted in open court that no receipt of the items seized was issued immediately after appellants got arrested.[44] The inventory of the items was prepared only after the same were turned over to the evidence custodian SPO4 Ancheta at the police station. It was the latter who prepared the inventory in the police station.[45]

In *People v. Omamos y Pajo*,[46] the Court acquitted the accused when nothing in the records showed that the required inventory and photography of the seized item were ever complied with. The prosecution's formal offer of evidence also did not bear compliance with these requirements.

While the required inventory and photography may be conducted at the nearest police station or at the nearest office of the apprehending officers, the same may be allowed only if attended with good and sufficient reason.[47] Here, the prosecution did not give any valid explanation why it departed from the prescribed procedure for the inventory and photography.

Third. The law and the rules require the inventory and photograph of the seized items to be made in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official. This requirement was, again, not complied with here.

PO1 Sugayen did not mention that when the inventory and photography were done at the police station, assuming it was justified, they were done in the presence of three (3) required witnesses, thus:[48]

Q: Upon arresting and seizing the items, Mr. Witness, did you call the barangay officials?

A: No, sir.

Q: Also media personalities and (representatives) of DOJ, you did not call?

A: It's only at the police station that they arrived, sir.[49]

SPO4 Balolong similarly testified:

Q: Before you proceeded, Mr. Witness, to the alleged place of transaction, did you coordinate with the barangay officials of Brgy. 8, Laoag City for them to be witnesses in this alleged buy bust operation?

A: No, sir.

Q: Even after this operation, you did not coordinate with the barangay officials?

A: No, sir.

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Q: Even representatives from the media, there were none?

A: There were media who came at the station and conduct... there were media who came to the station after the operation, sir.

Q: Who was that media who arrived?

A: I cannot recall, sir.

Q: How many media personalities arrived at your office?

A: I cannot recall, sir but there were some.

Q: Because there was none, am I right?

A: There were some media personalities, sir.[50] (Emphasis supplied)

In *People v. Martin y Ison*,^[51] we stressed that the absence of even one (1) of the three (3) required representatives during the inventory and photograph of the seized items was enough to breach the chain of custody. In that case, no photograph of the seized drug was taken at all and no DOJ representative was present during the inventory. The persons who witnessed the inventory were two (2) media representatives, a barangay councilor, and an acting clerk of court of the Municipal Trial Court.

In *People v. Mendoza*,^[52] the Court emphasized that the presence of these personalities is an insulation against the evils of switching, planting, or contamination of evidence. While non-compliance may be allowed under justifiable circumstances, jurisprudence clarifies that the prosecution must show that the PDEA operatives exerted earnest efforts to comply with the procedure on the three (3) witness rule.^[53] Here, the absence of the appellants and the three (3) insulating witnesses during the inventory and photography was not explained, and worse, was not even recognized by the arresting team.

Fourth. There was no detailed account on the handling of the seized drug from the time it was confiscated up to its presentation in court, hence, putting the integrity of the corpus delicti in question. Consider:

- The prosecution failed to adduce evidence how the seized item was handled from the time it was (i) confiscated from appellants; (ii) while it was being transported en route the police station; and (iii) after the forensic chemist had examined it.

- Per Amended Information dated October 14, 2011, the weight of the seized illegal drug was 0.0415 gram. While per stipulation, the parties recognized that it was SPO2 Flojo who received from SPO4 Ancheta the illegal drug which weighed more or less 0.2 gram.^[54]

- SPO2 Sugayen testified that he marked the plastic sachet containing the illegal drug with initials "JBS;" while the parties stipulated that SPO2 Flojo received the seized item with markings "LCPS ACDV." As the records show, SPO2 Flojo merely stated in his proffered testimony that the markings "LCPS ACDV" were already written on the specimen when he received the same.^[55] The prosecution did not provide any explanation on the differences in the markings nor did the defense object to this substantial discrepancy.

- SPO2 Flojo allegedly received the seized item from SPO4 Ancheta at 1:30 in the afternoon of October 9, 2011 and delivered it to forensic chemist PS/Insp. Baligod at 2 o'clock in the afternoon. Chemistry Report No. D-051-2011 dated October 9, 2011,^[56] however, indicated that PS/Insp. Baligod received the item at 1:30 in the afternoon.^[57]

The foregoing substantial discrepancies on the identity of the alleged drug itself and the evidence of the buy-bust operation created serious doubt that the illegal drug allegedly seized from appellants and transmitted to the investigating officer and then to the forensic chemist are one and the same.

Too, the discrepancy in the prosecution evidence on the identity of the seized and examined shabu and that formally offered in court cannot but lead to serious doubts regarding the origin of the shabu presented in court. This discrepancy and the gap in the chain of custody seriously affect the identity of the corpus delicti without which the appellants must be acquitted.[58]

Finally, none of the prosecution witnesses testified on how the corpus delicti was stored in the crime laboratory pending its delivery to the court for presentation as evidence.

The prosecution stipulated on the proposed testimony of forensic chemist PS/Insp. Baligod. During the hearing, the defense sought several clarifications from the prosecution on who actually delivered the specimen to the court. In the end, it was revealed that SPO2 Flojo not PS/Insp. Baligod who did so, thus:

COURT: So, why did you make that proffer?

PROSECUTOR FAJARDO:

It was the usual method they usually do if SPO2 Teodoro is not around, your Honor.

COURT:

That is why... but it should have been known upon you that it is not true (,) that Police Senior Inspector Roanalaine Baligod (was the one) who retrieved it from evidence cabinet because as records would show and as the Acknowledgment Receipt would show, it was SPO2 Teodoro Flojo who submitted it.[59] (Emphasis supplied)

SPO2 Flojo never took the stand to reconcile this substantial discrepancy for his testimony was peremptorily dispensed with.[60]

It is settled that absent any testimony on the management, storage, and preservation of the illegal drugs subject of seizure after its qualitative examination, the fourth link in the chain of custody of the illegal drugs is deemed not to have been reasonably established.[61]

In *People v. Burdeos y Oropa*[62] citing *People v. Hementiza* the Court enunciated that an accused may be acquitted for illegal sale of dangerous drugs because the records are bereft of any evidence as to how the illegal drugs were brought to court. The forensic chemist therein merely testified that she made a report confirming that the substance contained in the sachets brought to her was positive for shabu. There was no evidence how the shabu was stored, preserved, or labeled; nor the identity of the person who had custody of the seized drug before it was presented to the Court ever established.[63]

In fine, the breaches of procedure committed by the police officers militate against a finding of guilt against herein appellants. The integrity and evidentiary value of the corpus delicti had been indubitably compromised. It is well-settled that the procedure in Section 21 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.[64]

To repeat, the chain of custody here was broken from the time the illegal drug was confiscated until it got presented in court. The repeated breach of the chain of custody rule had cast serious uncertainty on the identity and integrity of the corpus delicti. The metaphorical chain did not link at all, albeit it unjustly restrained appellants' right to liberty. Verily, therefore, a verdict of acquittal is in order.[65]

Although a saving clause in the Implementing Rules and Regulations of RA 9165 allows deviation from established protocol, this is subject to the condition that justifiable grounds exist and "so long as the integrity and evidentiary value of the seized items are properly preserved." [66] Here, since the prosecution failed to recognize, nay, explain these procedural deficiencies, the saving clause cannot be validly invoked.

Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute compliance for the purpose of mending the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary. [67] Here, the presumption was amply overthrown by compelling evidence pertaining to the multiple breach of the chain of custody rule.

ACCORDINGLY, the appeal is GRANTED. The Decision dated January 04, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06822 is REVERSED and SET ASIDE.

Appellants DONNA CLAIRE DE VERA and ABIGAIL CACAL y VALIENTE are ACQUITTED in G.R. No. 229364 (Criminal Case No. 14940). The Superintendent of the Correctional Institution for Women, Mandaluyong City and Director of the Bureau of Corrections, Muntinlupa City are respectively: a) ordered to immediately release DONNA CLAIRE DE VERA and ABIGAIL CACAL y VALIENTE from custody unless she or he is being held for some other lawful cause; and b) submit their separate reports on the action taken within five (5) days from notice.

Let entry of final judgment be issued immediately.

SO ORDERED.

Carpio (Chairperson), Caguioa, J. Reyes, Jr., and Zalameda, JJ., concur.

[1] Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Andres B. Reyes, Jr. (now Member of the Court) and Romeo F. Barza, concurring, all members of the First Division, Rollo, pp. 2-16.

[2] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[3] Record, p. 18

[4] Testified through written Proffer Testimony (Senior Police Officer 4 Loreto Ancheta) in lieu of his direct-examination (See Record, pp. 103 to 103 (a); but subjected to cross-examination and re-direct examination on October 2, 2012 (See TSN, October 2, 2012, pp. 320-349).

[5] As to SPO2 Flojo, the parties essentially stipulated on the following facts:

- (1) On October 9, 2011 at 1:30 in the afternoon, he received one (1) heat-sealed plastic sachet containing crystalline substance allegedly containing shabu with a weight of more or less than 0.2 grams from SPO\$ Loreto Ancheta;
- (2) At the same afternoon, he turned over the heat-sealed transparent plastic sachet together with the Request for Laboratory Examination to the laboratory chemist Roanalaine B. Baligod and that after examining the same at 2:00 o'clock in the afternoon, he took back the plastic sachet and kept it in the evidence cabinet of the PNP Crime Lab;
- (3) November 22, 2011, he retrieved the plastic sachet containing shabu from the evidence cabinet, turned it over to PS/Insp. Baligod who delivered it to the Court as evidence by Acknowledgment Receipt dated December 1, 2011;
- (4) The envelope marked as D-051-00-2011 containing an elongated plastic sachet with white crystalline substance and also marked as CC#14940 Pp vs. Donna (Claire) de Vera is the same plastic containing white

crystalline substance that he received from Officer Loreto Ancheta of the PNP;
(5) The markings LCPS "ACDV" was already present at the time he received the specimen;
(6) The plastic sachet is the same plastic sachet that he delivered to PS/Insp. Baligod; and
(7) The same plastic sachet was delivered to the Court on November 22, 2011. (See TSN, February 23, 2012, pp. 42-43)

As to PS/Insp. Baligod, the parties essentially stipulated on the following facts:

(1) On October 9, 2011 she received a request for laboratory examination from SPO2 Flojo to examine a one (1) heat-sealed sachet containing an alleged shabu;
(2) She conducted qualitative examination of the contents of one (1) heat-sealed transparent plastic sachet which turned positive for the presence of methamphetamine hydrochloride known as shabu;
(3) She reduced the examination in writing and executed Chemical Report No. D-051-2011;
(4) She placed her marking "RBB" and the case number D-051-2011 and date of examination as October 9, 2011; and
(5) At around November 22, 2011 around 2:30 o'clock in the afternoon, she retrieved the one (1) plastic sachet with the original letter request and the Chemistry Report No. D-051-2011 from the evidence locker and submitted to Atty. Bernadette Espejo of the Regional Trial Court, Laoag City. (See TSN, February 15, 2012, pp. 13-14).

[6] TSN dated August 30, 2012, pp. 209-211.

[7] Id. at pp. 212-213.

[8] Id. at pp. 213-217.

[9] TSN, dated May 24, 2012, pp. 72-73.

[10] TSN, dated May 24, 2012, pp. 75-84.

[11] TSN, dated August 30, 2012, p. 231.

[12] TSN, dated May 24, 2012, p. 85.

[13] TSN, dated August 30, 2012, p. 231.

[14] Id. at 242.

[15] Record, p. 8

[16] Id. at 39

[17] Id. at 40

[18] Index of Exhibits; Record, unnumbered page.

[19] TSN, November 15, 2012, pp. 366-382.

[20] Id. at 387-391.

[21] Id. at 392-394.

[22] Id. at 403-404.

[23] Id. at 405-407.

[24] Id. at 407-410.

[25] TSN, February 8, 2013, p. 453.

[26] TSN, June 7, 2013, p. 550.

[27] Id. at 552-556.

[28] Id. at 558-563.

[29] TSN, April 16, 2013, pp. 509-514.

[30] TSN, May 23, 2013, pp. 525-527.

[31] Formal Offer of Documentary Evidence dated March 19, 2013, Record, pp. 128-129; See also Index of Exhibits, Record, unnumbered page.

[32] CA Rollo, pp. 13-31.

[33] Appellant De Vera's Brief dated September 30, 2014, CA Rollo, pp. 49-56; See also Appellant Cacal's Brief dated February 4, 2015, CA Rollo, pp. 80-89.

[34] Plaintiff-Appellee's Brief dated May 28, 2015, CA Rollo, pp. 117-132.

[35] Rollo, pp. 2-16.

[36] Manifestation dated July 14, 2017 filed by Office of the Solicitor General, Rollo, pp. 35-36; Manifestation filed by appellant Donna Claire De Vera and received by the Court on November 24, 2017, Rollo, pp. 41-42; and Manifestation(s) and Motion dated January 21, 2019 filed by appellant Abigail Cacal y Valiente, Rollo, pp. 52-60.

[37] People v. Calvelo, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 244.

[38] As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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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[.]

xxxx

[39] People v. Dela Torre y Cabalar, G.R. No. 225789, July 29, 2019; Jocson y Cristobal v. People, G.R. No. 199644, June 19, 2019 citing People v. Dahil, 750 Phil. 212, 231 (2015).

[40] People v. Hementiza, 807 Phil. 1017, 1026 (2017).

[41] TSN, May 29, 2012, pp. 127-129.

[42] G.R. No. 238613. August 19, 2019.

[43] See G.R. No. 231983, March 7, 2018.

[44] TSN, May 29, 2012, pp. 127-129.

[45] Id.

- [46] See G.R. No. 223036, July 10, 2019.
- [47] *People v. Tampan*, G.R. No. 222648, February 13, 2019.
- [48] TSN, May 29, 2012, pp. 127-129.
- [49] *Id.* at 128.
- [50] TSN, September 4, 2012, pp. 296-297.
- [51] G.R. No. 231007, July 1, 2019.
- [52] 736 Phil. 749, 761 (2014).
- [53] *People v. Miranda*, G.R. No. 229671, January 31, 2018.
- [54] See TSN, February 23, 2012, pp. 42-43.
- [55] *Id.*
- [56] Record, p. 8.

[57] ATTY. ALEJANDRO:

Your Honor please, may we know again if what time Officer Flojo turned over the plastic sachet to the Chemist Baligod for the first time? It was offered, your Honor please, that this witness, he is saying to the esteemed prosecutor within the hearing to this humble representation that he allegedly received the specimen containing white crystalline substance at 1:30 o'clock in the afternoon on October 9 and ...

COURT:

Received from whom?

ATTY. ALEJANDRO:

Received from Ancheta, your Honor (and) then he only submitted or delivered to the chemist at 2:00 in the afternoon of the same date 09 OCT 2011.

xxx xxx

ATTY. ALEJANDRO:

Now, in the Chemistry Report, your Honor, I would like to invite the kind indulgence of the Honorable Court that it states (hereunder) the time and date received signed by Forensic Baligod (is) 1:30 o'clock. (Emphasis supplied) (See TSN, February 23, 2012, p. 49-50).

- [58] *People v. Kamad*, 624 Phil. 289, 311 (2010).
- [59] TSN, February 15, 2012, p. 33.
- [60] See TSN, February 23, 2012, pp. 42-56.
- [61] See *People v. Ubungen y Pulido*, G.R. No. 225497, July 23, 2018.
- [62] G.R. No. 218434, July 17, 2019.
- [63] G.R. No. 227398, March 22, 2017.
- [64] See *People v. Lumaya*, G.R. No. 231983, March 7, 2018 (citations omitted).
- [65] See *Jocson y Cristobal v. People*, G.R. No. 199644, June 19, 2019.

[66] See Section 21 (a), Article II, of the IRR of RA 9165.

[67] *People v. Martin y Ison*, G.R. No. 231007, July 1, 2019 citing *People v. Cabiles*, 810 Phil. 969, 976 (2017).

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