

JERRY BARAYUGA Y JOAQUIN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 248382. July 28, 2020

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This Petition for Review on Certiorari under Rule 45 assails the following dispositions of the Court of Appeals in CA-G.R. CR HC No. 07395 entitled " People of the Philippines v. Jerry Barayuga y Joaquin", viz:

1. Decision[1] dated May 28, 2018 affirming his conviction for violation of Section 5 of Republic Act 9165 (RA9165);
2. Resolution[2] dated September 19, 2018 ordering the issuance of an entry of judgment in view of petitioner's failure to file a notice of appeal within the reglementary period; and
3. Resolution[3] dated July 10, 2019 denying reconsideration.

The Charge

Petitioner Jerry Barayuga y Joaquin was charged with violation of Section 5 of RA 9165 for the sale of 0.0803 gram of methamphetamine hydrochloride, otherwise known as shabu, viz:

Criminal Case No. 15176-13

That on or about 12:20 pm of May 30, 2012 in the City of Laoag and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously sell and deliver to a police poseur-buyer one (1) heat sealed transparent plastic sachet containing 0.0803 gram of Methamphetamine Hydrochloride locally known as "shabu", a dangerous drug, without any license or authority, in violation of [Section 5, Article II of RA 9165],

CONTRARY TO LAW.[4]

On arraignment, petitioner pleaded "not guilty".[5]

The Proceedings Before the Trial Court

PO1 Jackson Sugayen (PO1 Sugayen), SPO1 Jonathan Alonzo (SPO1 Alonzo) and SPO4 Rovimmanuel Balolong (SPO4 Balolong) testified for the prosecution. Testimonies of Police Inspector Amiely Ann Navarro (P/Insp Navarro) of the Philippine National Police (PNP) - Ilocos Norte Provincial Crime Laboratory, SPO4 Wilfredo Calubaquib (SPO4 Calubaquib), and SPO2 Ferdinand Santos (SPO1 Santos) were dispensed with upon admission by the defense of their proffered testimonies.[6] Petitioner testified as sole witness for the defense.[7]

The Prosecution's Evidence

PO1 Sugayen testified that on May 30, 2012, around 11:50 in the morning, he was on duty at the Laoag City PNP

Office when he received a call from SPO4 Balolong instructing him to proceed to the house of their asset in Brgy. 10. When he arrived, SPO4 Balolong informed him that the asset was able to order P1,000.00 worth of shabu from petitioner and that he was to act as poseur-buyer in the buy-bust operation later that day. SPO4 Balolong, too, called the police station and ordered SPO4 Calubaquib to accomplish the proper forms and have the serial number of the P1,000.00 buy-bust money recorded on the blotter. SPO4 Balolong then handed him the P1,000.00 buy-bust money.

He and the asset rode a motorcycle to Brgy. 20, General Luna Street corner Lampitoc Street while SPO4 Balolong convoyed them with his car. Moments later, petitioner arrived. The asset introduced him to petitioner as the buyer of shabu. He then gave the buy-bust money to petitioner which the latter pocketed. In exchange, petitioner gave him a plastic sachet containing white crystalline substance from a flip-top cigarette box.

After the sale was consummated, he held petitioner and said "Police ako, aretado ka. " SPO4 Balolong approached them because petitioner tried to resist arrest. He read petitioner his rights while SPO4 Balolong frisked him. SPO4 Balolong recovered from petitioner the flip-top cigarette box and buy-bust money.[8]

Subsequently, the arresting team brought petitioner to the police station where he marked the sachet with his initials "JBS" in front of petitioner and duty investigator SPO1 Alonzo before turning it over to SPO1 Alonzo.[9]

SPO4 Rovimmanuel Balolong testified that on May 30, 2012, around 11:50 in the morning, he was at home when one of their police assets called and informed him about petitioner's illegal drug activities. He called PO1 Sugayen and directed him to proceed to the asset's house. There, he informed PO1 Sugayen that the latter will act as poseur-buyer who will buy P1,000.00 worth of shabu from petitioner. The P1,000.00 marked "RBB" was recorded in the police blotter by SPO4 Calubaquib.

He, PO1 Sugayen and the police asset proceeded to Brgy. 20. He acted as back up and waited in his car while PO1 Sugayen and the asset transacted with petitioner. After the sale was consummated, he saw PO1 Sugayen hold petitioner. He hurriedly approached them and assisted in petitioner's arrest. He frisked petitioner and recovered from him the P1,000.00 marked money and a flip-top cigarette box. They brought petitioner to the police station where he turned over the seized money and the flip-top cigarette box to SPO1 Alonzo.[10]

The parties stipulated on the supposed testimony of SPO1 Alonzo as the investigator and evidence custodian of the case. On May 30, 2012, he received from PO1 Sugayen one (1) heat-sealed transparent plastic sachet containing alleged methamphetamine hydrochloride. He does not know the source of such plastic sachet though he witnessed PO1 Sugayen mark it "LCPS" "JJB" before placing his signature. He prepared a letter-request for laboratory examination and requested SPO1 Santos to prepare the other documents. On even date, he brought the letter-request together with the seized sachet to the crime laboratory which were received by forensic chemist Police Inspector P/Insp Navarro. He wrote his name and affixed his signature on the space beside "Delivered by:" in the rubber stamp receipt. He could identify the seized sachet and the letter-request for laboratory examination."[11]

The parties, too, stipulated that on May 30, 2012, around 12:30 in the afternoon, SPO4 Calubaquib received a call from SPO4 Balolong instructing him to enter in the police blotter the serial number of the buy-bust money.[12]

More, SPO1 Santos was the one who prepared the Inventory of Seized Items and affixed his signature on behalf of SPO4 Loreto Ancheta, the Senior Evidence Custodian who was not around that time.[13]

Finally, the parties stipulated that on May 30, 2012, around 4:30 in the afternoon, forensic chemist P/Insp Navarro received from SPO1 Alonzo a letter-request for the examination of one (1) heat sealed plastic sachet containing alleged shabu together with the plastic sachet marked "LCPS", "JJB", "JBS" and a signature. She conducted a

qualitative examination on the contents of the sachet and found them positive for methamphetamine hydrochloride. After examination, she sealed the sachet with masking tape and marked it "D-035-2012-IN May 30, 2012 AALN" and affixed her signature. She executed Initial Laboratory Report No. D-035-2012-IN and Chemistry Report No. D-035-2012-IN which contained her findings, she submitted the sachet, letter-request and Chemistry Report No. D-035-2012-IN to evidence custodian PO1 Erlanger Aguinaldo for safekeeping. On June 22, 2012, she and PO1 Aguinaldo retrieved the sachet, letter-request and Chemistry Report from their evidence locker and submitted the same to the RTC branch clerk of court Atty. Bernadette Espejo. She could identify the sachet, letter-request and Chemistry Report issued by Atty. Espejo.[14]

The prosecution offered as documentary evidence the Letter Request for Laboratory Examination, Inventory of Evidence, and Chemistry Report No. D-035-2012-N.[15]

The Defense's Evidence

Petitioner testified that on May 30, 2012, around 9:30 in the morning, he was at home when he received a text from his friend Mark Cid inviting him to play mahjong at the latter's house. Around 11:30 in the morning, Mark messaged him again, saying all the other players were already there. He then rode his motorcycle to Mark's house but when he arrived, Mark told him one player was still missing so he left to have lunch.

While he was traversing Lampitoc Street toward General Luna Street, two (2) men blocked his way, one of whom he later identified as PO1 Sugayen. As he stopped his motorcycle to avoid bumping them, one of the men held the handlebars of his motorcycle while the other introduced himself as a policeman and tried to handcuff him. Suddenly, SPO4 Balolong appeared out of nowhere, grabbed his hand, told him to stop struggling and uttered invectives at him. The policemen frisked him and took his coin purse containing four (4) pieces of P1,000.00 bills which he was supposed to use in playing mahjong, his cellphone, cigarettes, and a lighter. He was made to board a car and, thereafter, brought to the police station. Along the way, SPO4 Balolong told him, "Kinunak kenka idin dika pulos pagtalnaen" (I told you before, I will never let you live in peace).[16]

At the police station, PO1 Sugayen strip-searched him but found nothing. SPO4 Balolong arrived, pointed a gun at him and threatened to shoot him if he did not produce the item. He asked SPO4 Balolong what he was talking about but the latter simply told him he received a text message stating he had the items with him. He insisted he did not know these "items" they were referring to.

SPO4 Balolong left for a moment but later returned with a plastic sachet. When he continued to deny knowledge of what the policemen were talking about, SPO4 Balolong pointed to the sachet and said, "Dayton lattan ne" (This one will do). SPO4 Balolong also took out a P1,000.00 bill from his wallet. The police then took pictures of him pointing at the plastic sachet and P1,000.00 bill on top of a table as he was instructed to do.

Four (4) hours later, he was brought to the crime laboratory. Along the way, SPO1 Alonzo stopped by N. Corpuz Street to buy a pen to mark something. At the crime laboratory, his urine sample was taken, after which he was brought back to the police station.[17]

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Decision[18] dated January 30, 2015, the trial court found petitioner guilty as charged, thus:

WHEREFORE, judgment is hereby rendered finding accused Jerry Barayuga y Joaquin GUILTY beyond reasonable doubt as charged of illegal sale of shabu and is accordingly sentenced to suffer the penalty of LIFE IMPRISONMENT and pay a fine of P500,000.00.

The shabu subject hereof is confiscated for proper disposition as the law prescribes.

SO ORDERED.[19]

The trial court held that the prosecution sufficiently established petitioner's act of selling dangerous drugs. It gave credence to the testimonies of the prosecution witnesses, consistent as they were with documentary and object evidence.[20]

As for the chain of custody rule, the trial court acknowledged the same to have been breached: the marking and inventory of the confiscated items were not done at the situs criminis right after petitioner's arrest but at the police station; it was not mentioned whether the inventory and photograph were done in the presence of the insulating witnesses required under RA 9165; and no photographs of the seized items were taken, or if there were any, the same were not presented in court. This notwithstanding, the trial court was convinced that the arresting officers as well as those who subsequently took possession of the seized dangerous drug preserved the integrity of the corpus delicti.[21]

Petitioner's self-serving denial deserved scant consideration. He was caught selling dangerous drugs in flagrante delicto by the buy-bust team.[22]

The Proceedings before the Court of Appeals

Petitioner faulted the trial court in rendering a verdict of conviction against him when no actual buy-bust operation took place considering:

First. PO1 Sugayen merely handed him the marked money but the negotiation of the sale was only between him and the asset.

Second. In SPO4 Balolong and PO1 Sugayen's Joint Affidavit, they stated that the marked money bore the serial number 164724 and yet on record, the serial number was 164725.

Lastly. There was no pre-arranged signal agreed upon among the members of the buy-bust team as to indicate consummation of the sale.

At any rate, the prosecution failed to establish an unbroken chain of custody as the police officers did not immediately mark the seized dangerous drug at the scene of the buy bust sale. Too, no photograph of the seized items was taken.[23]

On the other hand, the Office of the Solicitor General (OSG) maintained that petitioner's arrest was the result of a legitimate buy-bust operation as he was caught in the act of selling shabu. The integrity and evidentiary value of the corpus delicti were also preserved.[24]

The Court of Appeals' Ruling

By Decision dated May 28, 2018,[25] the Court of Appeals affirmed. It agreed with the trial court that all the elements of illegal sale of dangerous drugs were proved. PO1 Sugayen narrated in detail how the transaction transpired from the time he and the asset arrived at Brgy. 20, General Luna Street corner Lampitoc Street and met with petitioner until the time he handed the marked money in exchange for a plastic sachet containing 0.0803 gram of shabu. SPO4 Balolong corroborated PO1 Sugayen's testimony. The chain of custody of the corpus delicti had also been preserved.[26]

Although the marking was not done at the place where petitioner was apprehended, this lapse did not render the seized item inadmissible. PO1 Sugayen explained that he marked the sachet at the police station because he did not bring a pen and they were already attracting a crowd at the scene of the buy-bust operation.[27]

It dismissed petitioner's allegation that no valid buy-bust operation took place. For although it was the asset who brokered the transaction, the asset introduced PO1 Sugayen as the buyer and petitioner willingly accepted the P1,000.00 bill from the PO1 Sugayen and handed over the plastic sachet of shabu in return.[28]

Anent the discrepancies in the serial number of the buy-bust money as appearing in the Joint Affidavit of Arrest vis-a-vis the one presented in evidence, SPO4 Balolong testified that there was a mere clerical error in the serial number stated in the Joint Affidavit of Arrest. At any rate, the marked money used in a buy-bust operation was not indispensable evidence but merely corroborative in nature.[29]

Through Resolution dated September 19, 2018,[30] the Court of Appeals ordered the issuance of an Entry of Judgment in view of petitioner's failure to file a notice of appeal within the reglementary period.

Petitioner moved for reconsideration, seeking for the Court of Appeals to lift the entry of judgment and admit his notice of appeal.[31] The Court of Appeals denied the motion by Resolution[32] dated July 10, 2019.

The Present Petition

Petitioner now asks the Court to reverse the assailed disposition of the Court of Appeals and prays anew for his acquittal. While he is aware that the correction of wrongful conviction may only be remedied by a notice of appeal or a motion for reconsideration, which his counsel failed to file in his case, he seeks the kind indulgence of this Court to relax technical rules of procedure in order to serve the broader interest of substantial justice.[33]

He averred that at the time the Court of Appeals' Decision dated May 28, 2018 and Resolution dated September 29, 2018 were issued, Atty. Emilio Edgar V. Doloroso, Jr. remained to be his counsel-of-record. Although Atty. Doloroso received copies of the dispositions of the Court of Appeals, it was not established that his counsel informed him of their contents. It was Atty. Doloroso's duty to at least confer with him whether he intended to appeal his conviction. As it was though, Atty. Doloroso, Jr. failed to protect his interest.

Meanwhile, he is an inmate who is serving time at the New Bilibid Prison. Surely, he did not have the means and capacity to immediately communicate with his counsel. Since he did not receive word from his counsel about any adverse ruling from the Court of Appeals, he was surprised to have received Resolution dated September 19, 2018 ordering the issuance of an entry of judgment in his case. Hence, he immediately wrote a letter to the Public Attorney's Office (PAO) seeking legal assistance.[34]

Petitioner prays that considering the gravity of the penalty he stands to suffer, the relaxation of procedural rules is warranted especially since he has a meritorious case.[35] He argued that in actions involving sale of dangerous drugs, there must be proof that indeed the transaction took place. In his case, though, the asset who brokered the sale transaction between him and PO1 Sugayen was not presented as a witness so as to shed light as to how the sale started and how it was consummated.[36]

As for the chain of custody, he claims that the courts below blatantly disregarded Section 21 of RA 9165. For one, the marking was not done at the place of the arrest. PO1 Sugayen's explanation that he opted to mark the seized dangerous drug at the police station because he did have a pen with him and that they were already attracting a crowd, is not a valid reason to excuse non-compliance with Section 21. For another, the marking, inventory and photograph, if any, were not in the presence of the three (3) insulating witnesses. In view of the multiple lapses in the chain of custody rule, the identity and integrity of the dangerous drug here had not been preserved.[37] His acquittal is therefore in order.

In its Comment dated February 6, 2020,[38] the OSG ripostes that negligence of petitioner's counsel binds him for it is for petitioner to communicate with his counsel regarding the progress and development of his case.[39] Despite receiving the Court of Appeals Decision dated May 28, 2018 on June 14, 2018, petitioner did not make

any move to contact his counsel for purposes of appealing his conviction before the Court. It was only on November 12, 2018 that he decided to write the PAO for legal assistance. Meantime, the Court of Appeals' decision had become final and executory and, as such, may no longer be revisited. To do otherwise would violate the principle of immutability of judgment.[40]

Issues

- Did the Court of Appeals err in finding no compelling reason to lift the entry of judgment in CA-G.R. CR HC No. 07395?
- Did the arresting police officers comply with the chain of custody rule?

Ruling

The petition is meritorious.

Petitioner's case merits relaxation of procedural rules

It has been held that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.[41] *Heirs of Zaulda v. Zaulda*[42] is instructive:

The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice."

What should guide judicial action is the principle that a party- litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. x x x

While the Court applauds the Court of Appeals' zealotry in upholding procedural rules, it cannot simply allow a man to be incarcerated for life without his conviction being reviewed due to the negligence of his counsel. While as a general rule, negligence of the counsel binds the client, one of the exceptions is when the counsel's actuations are gross or palpable, resulting in serious injustice to client.[43] A lawyer is deemed to be grossly negligent when he or she fails to exercise even the slightest of care or diligence, or entirely omits the same. Gross negligence examines a thoughtless disregard of consequences without exerting any effort to avoid them.[44]

Here, at the time the entry of judgment against petitioner was issued, Atty. Doloroso remained to be petitioner's counsel-of-record. There was no showing that a written consent from petitioner or a permission from the court to withdraw as counsel was obtained by him after due notice of hearing. Therefore, his failure to protect petitioner's interests by not appealing the judgment, much less, discuss with petitioner his available remedies, amounted to gross negligence which effectively deprived petitioner the opportunity to dispute his conviction. The Court views this not as mere oversight on the part of Atty. Doloroso but downright abandonment of his client.

At any rate, petitioner who is serving life in prison could not be expected to have the capacity to immediately communicate with his counsel. More, he was not negligent in pursuing his case. For upon receipt of a copy of the Court of Appeals' Resolution dated September 19, 2018 on October 24, 2018, he immediately wrote the PAO and sought assistance in elevating his case before this Court. In view of these circumstances, the Court finds that the relaxation of strict procedural rules is warranted here and lifts the entry of judgment issued by the Court of Appeals, especially considering petitioner's meritorious case as discussed below.

Lapses in the chain of custody rule cast doubts on the identity and integrity of the corpus delicti

Petitioner was charged with illegal sale of dangerous drugs committed on May 20, 2012. The governing law, therefore, is RA 9165 prior to its amendment in 2014.

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 possessed by the accused is the same substance presented in court.^[45] It must prove that the dangerous drug seized from petitioner is truly the substance offered in court as corpus delicti with the same unshakeable accuracy as that required to sustain a finding of guilt.

Section 21 of RA 9165 prescribes the standard in preserving the corpus delicti in illegal drug cases, 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 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) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision, viz:

(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;

xxxx xxxx

These provisions embody the chain of custody rule. They are 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 and their presentation in court for identification and destruction. This record includes the identity and signature of the person who held temporary custody of the seized items, the date and time when the transfer of custody was made in the course of the items' safekeeping and use in court as evidence, and their final disposition.[46]

People v. Omamos[47] reiterated that for a successful prosecution of a case involving illegal drugs, the following four (4) links in the chain of custody must be proved:

First, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;

Second, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

We focus on the first link which petitioner avers was breached.

The first link refers to the marking, inventory and photograph of the seized items.

"Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.[48] Marking though should be done in the presence of the apprehended violator and the required insulating witnesses i.e. a representative from the media and the Department of Justice (DOJ), and any elected public official[49] immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.[50]

Here, PO1 Sugayen testified that he only marked the seized items at the police station, only in the presence of petitioner and SPO1 Alonzo. Verily, not one of the required insulating persons witnessed the marking of the seized items. Neither was there an attempt on the arresting officers to secure their presence for the marking, inventory and photograph of the seized dangerous drug after the buy bust operation. Hence, the source, identity, and integrity of these items remained questionable.

Too, the chain of custody rule ordains that the apprehending team must, immediately after seizure and confiscation, conduct a physical inventory and photograph these items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as three (3) required witnesses.[51]

SPO1 Santos admitted that the inventory of the seized item was not done in the presence of any of the three (3) insulating witnesses required under Section 21 of RA 9165. As for the photograph, the arresting officers claimed to have taken photographs of the seized item but records show otherwise. They offered no justification for their omission.

In People v. Escaran,[52] the Court emphasized that the presence of the witnesses from the DOJ, the media, and from public elective office at the time of apprehension is mandatory. The insulating presence of these witnesses during the seizure, marking, inventory and photograph of the dangerous drugs will prevent the evils of switching, planting or contamination of the corpus delicti. Their presence at the time of seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drug.

In fine, the first link had been broken.

Surely, these lapses in the chain of custody rule cast serious doubts on the identity and the integrity of the corpus delicti. The metaphorical chain did not link at all, albeit it unjustly deprived petitioner of his right to liberty. *Mallilin v. People*[53] ordained:

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.

The Court concedes that RA 9165 contains a saving clause allowing liberality whenever there are compelling reasons to otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. The Court, however, cannot apply such liberality in this case.

Here, the prosecution did not at all offer any explanation as for the absence of the required insulating witnesses during the marking, inventory and photograph of the seized dangerous drug. Too, while PO1 Sugayen explained why he opted the marking to be done at the police station - that he does not have a pen at that time and that they were already attracting a crowd, the same are insufficient to render the saving clause applicable. For this reason, there is no occasion for the proviso "as long as the integrity and the evidentiary value of the seized items are properly preserved", to even come into play.

The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.[54]Hence, if the chain of custody rule had not been complied with, or no justifiable reason exists for its non-compliance, the Court must acquit as a matter of right.[55]

ACCORDINGLY, the petition is GRANTED. The Entry of Judgment dated September 19, 2018 in CA-G.R. CR HC No. 07395 is LIFTED. The Court of Appeals' Decision dated May 28, 2018 and Resolution dated July 10, 2019 are REVERSED and SET ASIDE.

Jerry Barayuga y Joaquin is ACQUITTED of violation of Section 5, Article II of Republic Act 9165. The Court DIRECTS the Director of the Bureau of Corrections, Muntinlupa City to: (a) cause the immediate release of Jerry Barayuga y Joaquin from custody unless he is being held for some other lawful cause or causes, (b) and to submit his report on the action taken within five (5) days from notice. Let entry of judgment be immediately issued.

SO ORDERED.

Peralta, C.J., Caguioa, Reyes, J., Jr., and Hernando,[*] JJ., concur.

[*] Associate Justice Mario V. Lopez recused from the case due to prior participation in Court of Appeals. Associate Justice Ramon Paul L. Hernando assigned as additional member.

[1] Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Now Supreme Court Associate Justice Mario V. Lopez and Associate Justice Pablito A. Perez; rollo, pp. 52-62.

[2] Rollo, p. 63.

[3] Id. at 34-39.

[4] Id. at 78.

[5] Id. at 79.

[6] Id.

[7] Id.

[8] Id. at 52-53.

[9] Id. at 53.

[10] Id. at 54.

[11] Id.

[12] Id. at 54-55.

[13] Id. at 55.

[14] Id.

[15] Id.

[16] Id. at 56.

[17] Id. at 55-57.

[18] Penned by Judge Philip G. Salvador; rollo, pp. 78-90.

[19] Rollo, p. 90.

[20] Id. at 213.

[21] Id. at 88-89.

[22] Id. at 89.

[23] Id. at 58.

[24] Id. at 59.

[25] Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Now Supreme Court Associate Justice Mario V. Lopez and Associate Justice Pablito A. Perez; rollo, pp. 52-62.

[26] Id. at 60.

[27] Id.

[28] Id. at 59.

[29] Id. at 59-60.

[30] Id. at 63.

[31] Id. at 63-71.

- [32] Id. at 34-39.
- [33] Id. at 15.
- [34] Id. at 18.
- [35] Id. at 20.
- [36] Id. at 21-22.
- [37] Id. at 25-27.
- [38] Id. at 117-128.
- [39] Id. at 123.
- [40] Id. at 124-125.
- [41] *Curammeng v. People*, 799 Phil. 575, 581-582 (2016).
- [42] 729 Phil. 639, 651 (2014).
- [43] *Bagaporo v. People of the Philippines*, G.R. No. 211829, January 30, 2019.
- [44] See *Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp.*, 608 Phil. 478, 494 (2009).
- [45] *People v. Barte*, 806 Phil. 533, 542 (2017).
- [46] *Largo v. People*, G.R. No. 201293, June 19, 2019.
- [47] G.R. No. 223036, July 10, 2019.
- [48] *People v. Ismael*, 806 Phil. 21, 29 (2017).
- [49] *People v. Escaran*, G.R. No. 212170, June 19, 2019.
- [50] *People v. Ramirez and Lachica*, G.R. No. 225690, January 17, 2018, citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).
- [51] See *People v. Alfredo Doctolero, Jr.*, G.R. No. 243940, August 20, 2019.
- [52] *Supra*, note 49.
- [53] 576 Phil. 576, 587 (2008).
- [54] *Largo v. People*, *Supra*, Note 46.
- [55] *People v. Año*, G.R. No. 230070, March 14, 2018.

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