



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 224290

Present:

CARPIO, J., Chairperson,
 LEONARDO-DE CASTRO,*
 PERALTA,
 PERLAS-BERNABE,
 CAGUIOA, JJ.

- versus -

VICENTE SIPIN Y DE CASTRO,
 Accused-Appellant.

Promulgated:

11 JUN 2018 *[Signature]*

X-----X

DECISION

PERALTA, J.:

This is an appeal from the Court of Appeals (CA) Decision¹ dated April 16, 2015 in CA-G.R. CR-HC No. 05641, which affirmed the judgment² of the Regional Trial Court of Binangonan, Rizal, Branch 70, (RTC) finding accused-appellant (*appellant*) Vicente Sipin y De Castro guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, for illegal sale and illegal possession of dangerous drugs, respectively, and sentencing him as follows:

* Designated Additional Member in lieu of Justice Andres B. Reyes, Jr., per Raffle dated March 19, 2018.

¹ Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Andres B. Reyes, Jr. (now a member of this Court) and Ricardo R. Rosario, concurring; *CA rollo*, pp. 157-168.

² Penned by Judge Ma. Conchita Lucero-De Mesa; *id.* at 18-37.

[Signature]

1. In Criminal Case No. 07-476, to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00), without subsidiary imprisonment in case of insolvency.
2. In Criminal Case No. 07-477, to suffer imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00), without subsidiary imprisonment in case of insolvency.

The facts are as follows:

Appellant Vicente Sipin y De Castro was charged with illegal sale and illegal possession of dangerous drugs, as follows:

Criminal Case No. 07-476

That, on or about the 11th day of August, 2007, in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly possess and have in his custody and containing 0.02 gram of white crystalline substance contained in one (1) heat sealed transparent plastic sachet, which was found positive to the test for Methylamphetamine hydrochloride also known as "shabu", a dangerous drug, in violation of the above-cited law.³

Criminal Case No. 07-477

That, on or about the 11th day of August, 2007, in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell and give away to a poseur-buyer one (1) heat sealed transparent plastic sachet containing 0.02 gram of white crystalline substance, which was found positive to the test for Methylamphetamine hydrochloride also known as "shabu", a dangerous drug, in consideration of the amount of Php100.00, in violation of the above-cited law.⁴

Upon arraignment, appellant, assisted by his counsel, pleaded not guilty to both charges. Trial ensued with the prosecution presenting as witnesses the following members of Binangonan, Rizal, Philippine National Police Station: (1) PO1 Arnel Diocena, the arresting officer; (2) PO1 Richard Raagas, the *poseur* buyer, (3) PO1 Dennis Gorospe, the back-up and investing officer; and (4) Forensic Chemist P/Insp. Mark Ballesteros.

³ Records (Criminal Case No. 07-476), p. 1.

⁴ Records (Criminal Case No. 07-477), p. 1.



According to the prosecution witnesses, on August 11, 2007 at about 12:00 midnight, a confidential asset arrived at the Binangonan Police Station with an information that a certain *Enteng* was selling shabu at *Barangay Calumpang*. The information was recorded in the blotter and reported to the chief, P/Supt. Herminio Cantaco, who then ordered the formation of a buy-bust team and the conduct of an operation. A *poseur* money was marked with the initials "GAD" by team leader SPO3 Gerardo Delos Reyes, and a pre-operational coordination was made with the Provincial Anti-Illegal Drugs Task Force by PO1 Gorospe.

Upon arrival aboard a motorcycle at Antazo Street, *Barangay Calumpang*, Binangonan, Rizal, PO1 Raagas and the asset went into the alley, while PO1 Diocena stayed around 3 to 6 meters away from where he could see everything. SPO3 Delos Reyes stayed in the police vehicle, while PO1 Gorospe who served as back-up was around 20 meters away. Alias *Enteng* then approached the asset and PO1 Raagas, and asked if they would buy or "i-score." When PO1 Raagas replied that he would, *Enteng* pulled out something out of his pocket and handed it to PO1 Raagas, who in turn gave *Enteng* the marked ₱100 bill. Thereafter, PO1 Raagas revealed himself as a police officer and removed his hat as pre-arranged signal. Upon seeing the signal, PO1 Diocena approached, ordered *Enteng* to take out the contents of his pocket, placed him under arrest, and read him his rights. PO1 Diocena confiscated the marked money and the plastic containing shabu, then turned them over to PO1 Raagas who marked the item he bought and the other plastic container confiscated by PO1 Diocena with the markings "VDS-1" and "VDS-2" in the presence of the accused, PO1 Diocena and PO1 Gorospe.

From the place of the incident to the police station, PO1 Raagas took custody and hand-carried the specimens wrapped in a bond paper, then turned them over to PO1 Gorospe, who prepared the booking sheet, the arrest report and the request for laboratory examination of the specimens. PO1 Gorospe also took pictures of *Enteng* and the specimens in the presence of PO1 Raagas and PO1 Diocena. The specimens were then given to PO1 Diocena who brought them to the crime laboratory. P/Insp. Ballesteros personally received the request for laboratory examination and the subject specimens, which later tested positive for shabu, a dangerous drug. Results of the examination were reflected in the Initial Laboratory Report and the Chemistry/Physical Science Report. P/Insp. Ballesteros marked the sachet with marking "VDS-1" as "A" and the sachet with marking "VDS-2" as "B" before turning them over to the evidence custodian of the laboratory.

For the defense, only appellant testified. At around 10:00 p.m. of August 11, 2007, appellant was on his way home from his sister's house when he met Rolly who was an asset of the "*munisipyo*". When Rolly asked him to send a text message when he sees the notorious group of Jun Bisaya who



frequents his place, appellant refused to cooperate because his life and those of his loved ones would be in danger. Rolly got angry and told him, "*Enteng alam mo naman masama akong magalit, baka kung ano lang mangyari sa iyo.*" Rolly then told appellant to just forget what they have talked about, and just accompany him to the person they were talking about. When appellant accommodated Rolly's request, in less than 20 minutes, he saw 2 male persons approaching the place where he and Rolly were talking. Rolly then said "*Sir, ayaw pong makipagtulungan sa atin.*" After Rolly held him, the person, who later turned out to be a policeman, placed his arm on appellant's shoulder then told him that he would like to talk him at the municipal building. Appellant went with the men peacefully, thinking that they would ask about Jun Bisaya. The three men tried to convince appellant to cooperate with them and told him to send a text message when he sees Jun Bisaya. Out of fear, appellant still refused to cooperate. The persons, who happened to be policemen, got angry and ordered that he be put in jail. They also brought appellant to Pritil for medical examination, and returned him to the police station where he was punched and forced to point to a shabu.

After trial, the court found appellant guilty beyond reasonable doubt of illegal sale of 0.02 gram of shabu and illegal possession of 0.02 gram of shabu, and sentenced him to suffer life imprisonment, plus a fine of ₱500,000.00 and imprisonment from 12 years and 1 day to 14 years and 8 months, and to pay the fine of ₱300,000.00, respectively.

The trial court ruled that the clear and positive testimony of PO1 Raagas, corroborated by PO1 Diocena, is more than sufficient to prove that an illegal sale of shabu took place. PO1 Raagas was able to give a clear and consistent account that an illegal drug was sold to him and another sachet was found in possession of appellant after his arrest. The court found no reason not to give full faith and credence to the testimonies of the police officers. It also upheld the presumption of regularity in the performance of official duty in favor of the police officers, since appellant failed to present clear and convincing evidence to overturn such presumption.

The trial court found no evidence to prove his defenses of denial and frame-up, and rejected appellant's claim that the police officers merely got mad at him for his refusal to send a text message in the event that he sees Jun Bisaya's notorious group. The court also noted that no relative of appellant came forward to testify, even as he supposedly wrote his siblings that he was in jail, and that they should keep such fact a secret from their parents who were sick. As regards the non-presentation of the police asset, the court held that it was no longer necessary because it would merely corroborate the testimony of PO1 Raagas who already detailed the circumstances surrounding the illegal sale based on his personal knowledge as *poseur*-buyer during the buy-bust operation.



Anent compliance with Section 21 of R.A. No. 9165, the trial court noted that the police officers testified that there was an inventory prepared by PO1 Gorospe at the police station but failed to submit it in evidence, and that they did not have any *barangay* official or media person with them during the operation. Be that as it may, the trial court held that such non-compliance is not fatal to the prosecution's case because its evidence shows that the integrity and evidentiary value of the specimens were safeguarded. In particular, the specimens were immediately marked at the place of the incident, the chain of custody was preserved, and the evidence strongly prove beyond doubt that what was examined at the crime laboratory and found positive for shabu were the same specimens bought from appellant and found in his possession.

Aggrieved by the RTC Decision, appellant, through the Public Attorney's Office (PAO), filed an appeal.

The PAO argued that the trial court erred in giving full weight and credence to the testimonies of the prosecution witnesses, relying on the presumption of regularity in the performance of official duty in favor of the police officers, and on the appellant's failure to impute ill motive on them. The PAO also pointed out the conflicting testimonies of PO1 Diocena and PO1 Gorospe as to who actually gave PO1 Diocena the specimens before they were brought to the crime laboratory. The PAO further faulted PO1 Diocena for failing to remember and specifically name P/Insp. Ballesteros as the "officer-on-duty" who actually received the specimens at the crime laboratory, as well as the prosecution for failure to demonstrate the precautionary measures undertaken by the person who had temporary custody of the specimens. The PAO likewise stressed that no inventory containing the signature of the appellant, a representative from the media, any elected public official and a representative of the DOJ was presented and identified in court by the prosecution witnesses, and that no justifiable reason was offered to excuse non-compliance with Section 21(a) of R.A. No. 9165.

The Office of the Solicitor General (OSG) argued that the testimonies of PO1 Raagas and PO1 Gorospe complimented each other, and showed that the latter was actually the one who turned over the plastic sachets of shabu to PO1 Diocena, and that the handling of the sachets were always accounted for every step of the way. The OSG also asserted that PO1 Diocena's testimony that the specimens were received by a "person-in-charge," does not contradict the testimony of P/Insp. Ballesteros that he was the one who actually received the specimens at the crime laboratory, as such fact was corroborated by the stamp receipt on the request for chemistry evaluation. Assuming that the chain of custody of the seized drugs was not perfectly observed, the OSG stressed that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items. Thus, the procedural infirmities concerning the lack of DOJ, *Barangay* and media representatives neither

affect the prosecution of the case, nor render appellant's arrest illegal or the items seized from him inadmissible.

The Court of Appeals dismissed the appeal for lack of merit, and affirmed the RTC Decision. The CA agreed with the trial court that the integrity of the seized items were duly preserved because the prosecution has presented and offered in court the key witnesses who had established the chain of custody of the seized drugs from their confiscation from appellant, to their marking and forwarding to the crime laboratory for examination.

Dissatisfied with the CA Decision, the PAO filed this appeal. The PAO and the OSG manifested that they are dispensing with the filing of supplemental briefs to avoid repetition of arguments raised before the CA.

The Court finds the appeal to be impressed with merit, and resolves to acquit appellant of the charges of illegal possession and illegal sale of dangerous drugs for failure to establish the unbroken chain of custody of said drugs, and to proffer any justifiable ground for the non-compliance with Section 21 of R.A. No. 9165.

For a successful prosecution of an offense for illegal sale of dangerous drugs, on the one hand, the following essential elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.⁵ The delivery of the illicit drug to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.⁶ In prosecutions for illegal possession of dangerous drugs, on the other hand, it must be shown that (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.⁷ The existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction.⁸

Since the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself,⁹ proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under R.A. No.

⁵ *People v. Rusicie Garrucho y Serrano*, G.R. No. 220449, July 4, 2016, citing *People v. Dalawis* 772 Phil. 406, 419-420 (2015).

⁶ *Id.*, citing *People of the Philippines v. Rosauero*, 754 Phil. 346, 353-354 (2015).

⁷ *Id.*, citing *Miclat, Jr. v. People*, 672 Phil. 191, 209 (2011).

⁸ *Id.*, *People v. Martinez*, 652 Phil 347, 369 (2010).

⁹ *People v. Quebral*, 621 Phil. 226, 233 (2009).



9165. To this end, the prosecution must establish the unbroken chain of custody of the seized items, thus:

The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, 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 in 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.¹⁰

The links that must be established in the chain of custody in a buy-bust situation, are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court.¹¹

Here, the prosecution failed to establish beyond reasonable doubt the third link in the chain of custody.

As aptly pointed out by the PAO, there is an unreconciled conflict between the testimonies of PO1 Diocena and PO1 Gorospe as to who actually gave PO1 Diocena the specimens before they were brought to the crime laboratory for examination. Investigating Officer PO1 Gorospe testified that he gave PO1 Diocena the specimens for laboratory examination, whereas PO1 Diocena stated that it was PO1 Raagas who gave him the specimens for delivery to the crime laboratory.

[PROSECUTOR PACURIBOT]

Q. What else did you do then after you brought the accused for medical examination to Pritil?

¹⁰ *People v. Enad*, 780 Phil. 346, 358-359 (2016), citing *People v. Dalawis*, *supra*, and *People v. Flores*, 765 Phil. 535, 541-542 (2015).

¹¹ *People v. Amaro*, G.R. No. 207517, June 1, 2016, and *People v. Mammad, et al.*, 769 Phil. 782, 790 (2015).

[PO1 GOROSPE]

A. I gave the specimen to PO1 Diocena and then he brought it to the crime lab.¹²

x x x x

[COURT]

Q. But you stated earlier that you were the one who delivered them to the crime laboratory. So, how did it come to be in your possession when according to you it was Raagas who had possession of the specimen while on the way to the police station?

[PO1 DIOCENA]

A. He carried the items from the place of the incident to the police station because we would prepare a request in the crime laboratory at Camp Crame.

Q. So, how did it come to be in your possession?

A. After the request was made, I was the one who personally delivered them.

Q. How did the specimen get to be in your possession?

A. It was given to me by PO1 Raagas.

Q. Where? Where did he give it to you?

A. In the police station, ma'am.

Q. While the request was being prepared, who had custody of the specimen?

A. He was the one in possession.

Q. Raagas. So, at what point did he transfer it to you?

A. *Bago po maibigay sa akin iyon, pinicturean muna ng investigator namin.* After the request was made. Your Honor.

x x x x

Q. Who was the investigator who took the picture?

A. PO1 Dennis Gorospe, ma'am.

Q. So, at what point did the specimen come to be in your possession because when the picture was taken where was the specimen.

A. It was with PO1 Raagas, your Honor. It was placed on a piece of paper, we took the pictures and then they were placed inside the plastic bag.

Q. After it was placed in the plastic bag, what happened to the specimen?

A. We brought it to the crime laboratory.

Q. How did it come to be with you, did you pick it up?

A. He gave it to me.

¹² TSN, March 11, 2010, p. 6.

- Q. Who gave it to you?
 A. PO1 Raagas.
- Q. Who picked it up from the table?
 A. He got it, ma'am.
- Q. And then, he gave it to you?
 A. Yes, ma'am.¹³

Serious inconsistencies in the testimonies of the police officers also broke the chain of custody of the dangerous drugs from the time they were seized from appellant until they were presented in court, thereby undermining the integrity and evidentiary value of the seized evidence.

First, it is not clear whether it was PO1 Diocena or PO1 Raagas who confiscated the other sachet of suspected *shabu* found in possession of appellant. PO1 Diocena testified that after ordering appellant to empty his pocket, he confiscated the marked money and the said sachet, then gave them to PO1 Raagas for marking. In contrast, PO1 Raagas stated that he was the only one who recovered both plastic sachets from appellant.

[PROSECUTOR PACURIBOT]

- Q. Now Mr. Witness, aside from the money and the one (1) piece of sachet of suspected *shabu* was there anything else that was recovered from the said person?

[PO1 DIOCENA]

- A. Aside from what I had confiscated, Officer Raagas also purchased something from him.
- Q. What happened to that thing that was purchased by Officer Raagas?
 A. He placed his initials on its markings.
- Q. What about the sachet that you recovered?
 A. Only one (1) sachet. I gave it to him and it was also marked.
- Q. So, it was PO1 Raagas who marked it?
 A. Yes, ma'am.¹⁴

x x x x

[PROSECUTOR PACURIBOT]

- Q. At the time Diocena asked him [accused] to put out the content of his pocket, where were you?

[PO1 RAAGAS]

- A. I was there right beside him.

¹³ TSN, May 22, 2008, pp. 14-15.

¹⁴ *Id.* at 9-10.

- Q. And then what happened?
A. I took the item and then Diocena read his rights.
- Q. What item did you take?
A. The one in the plastic sachet.
- Q. How many plastic sachet?
A. Only one (1), ma'am.
- Q. From whom did you get the plastic sachet?
A. From Enteng, ma'am.
- Q. You said Diocena asked him to take out the content of his pocket, did he comply?
A. Yes, ma'am.
- Q. So, how did you take the plastic sachet from him?
A. I took it from him, from his hand.
- Q. Then, after that, what happened?
A. I asked what his name was.
- Q. What was the name given to you?
A. Vicente de Castro Sipin, then I placed marking on the plastic sachet.
- Q. What marking did you place?
A. I placed his initial on it, ma'am, VDS.
- Q. Then after the marking, what else happened?
A. We brought him to the police station.
- Q. Who was in custody of the specimen that you got?
A. Gorospe, ma'am.
- Q. How many specimens did you get?
A. Two (2) ma'am.
- Q. You said a while ago you only took one (1), so where [did] the other come from?
A. The one we had purchased.
- Q. So, who recovered the other one from the said person?
A. I am the one, ma'am.
- Q. How about the other specimen?
A. Ma'am, I was also the one?
- Q. So you were the only one who recovered?
A. Yes, ma'am, I turned it over to Gorospe.¹⁵

¹⁵ TSN, May 21, 2009, pp. 5-7.



Second, it is doubtful whether a commotion took place after appellant was arrested, which supposedly prevented the police officers from making an inventory and taking pictures of the seized evidence. PO1 Raagas claimed that nobody else was present, and that appellant did not call the attention of anyone when he was arrested, but PO1 Gorospe insisted that there was a commotion caused by appellant's relatives.

[DEFENSE COUNSEL ATTY. MA. VICTORIA LIRIO]

Q. Why did you not take pictures on the said place of the incident instead of doing that in the police station?

[PO1 GOROSPE]

A. Because a commotion have already broken out in the vicinity perpetrated by his relatives. They were already beside us so we had to bring him to the police station.¹⁶

x x x x

[ATTY. LIRIO]

Q. When these marked allegedly received items were made, were there any other independent persons aside from your team and this alias Enteng, Mr. Witness?

[PO1 RAAGAS]

A. Nobody else, ma'am. We were the only ones, sir.

Q. What was the reaction then of the accused, at that time, Mr. Witness?

A. He had no reaction, ma'am.

Q. You mentioned a while ago that he was in front of his house. Did your operation not call the attention of his housemates or any other persons, at that time?

A. No, ma'am.¹⁷

Third, a crucial question looms over the safekeeping of the seized items which were placed in a container on the way back to the police station. PO1 Diocena testified that PO1 Raagas was in custody of recovered items contained in a stapled plastic container, but PO1 Raagas said that the items were placed in a mere bond paper.

[DEFENSE COUNSEL ATTY. LIRIO]

Q. The recovered items, Mr. Witness, who was in custody of the recovered items, Mr. Witness?

[PO1 DIOCENA]

A. PO1 Raagas, Ma'am.

¹⁶ TSN, March 11, 2010, p. 9.

¹⁷ TSN, August 13, 2009, p. 9.

Q. Would you know whether the said articles were sealed or contained in a sealed container?

A. In plastic, ma'am.

Q. But it was not sealed?

A. It was stapled, ma'am.¹⁸

x x x x

[DEFENSE COUNSEL ATTY. LIRIO]

Q. How did you carry the items? You describe how you brought it to the police station.

[PO1 RAAGAS]

A. I placed it inside a bond paper. I wrapped it.

Q. How many items did you put inside the bond paper?

A. Two (2) ma'am.

Q. After you put it inside the folded bond paper, what did you do with the bond paper?

A. I turned it over to Gorospe, Your Honor.¹⁹

Fourth, the records do not indicate that an inventory was identified and formally offered in evidence, and the prosecution witnesses could not agree on whether there was an inventory of the items seized from appellant. PO1 Diocena claimed that there was none, but PO1 Raagas said that PO1 Gorospe prepared one at the police station. PO1 Gorospe added that he did not give an inventory despite the presence of appellant's relatives.

[DEFENSE COUNSEL ATTY. LIRIO]

Q. By the way, Mr. Witness, did you make any inventory of the recovered specimens as well as the marked money?

[PO1 DIOCENA]

A. None, ma'am.²⁰

x x x x

[PROSECUTOR PACURIBOT]

Q. And then you mentioned a while ago that Officer Gorospe made an inventory of the specimen. How did you do that?

[PO1 RAAGAS]

A. I was at the police station.

¹⁸ TSN, February 19, 2009, pp. 8-9.

¹⁹ TSN, August 13, 2009, p. 11.

²⁰ TSN, February 19, 2009, p. 8.

- Q. When you said that Officer made an inventory of the specimen, were you present at the time that the picture was taken?
- A. I was present then.
- Q. And it was Officer Gorospe who took that picture?
- A. Yes, ma'am.
- Q. I am showing to you this picture marked as Exhibit "I", is this the picture when there was an inventory of the items that you mentioned?
- A. Yes, ma'am.²¹

x x x x

[DEFENSE COUNSEL ATTY. LIRIO]

- Q. Why did you not take pictures on the said place of the incident instead of doing that in the police station?

[PO1 GOROSPE]

- A. Because a commotion ha[s] already broken out in the vicinity perpetrated by his [accused'] relatives. They were already beside us so we had to bring him to the police station.
- Q. Having said that, Mr. Witness, your team failed, given the fact that there were relatives of the accused present thereat, your team failed to give an inventory or copies of the items allegedly recovered from alias "Enteng"?
- A. Yes, ma'am.
- Q. Despite the presence of the relatives you failed to give them a copy of the alleged items recovered.
- Q. Yes, ma'am.²²

The failure of the prosecution to establish an unbroken chain of custody was compounded by the police officers' non-compliance with the procedure for the custody and disposition of seized dangerous drugs as set forth in Section 21(1), Article II of R.A. No. 9165, which provides:

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

²¹ TSN, August 13, 2009, p. 12.

²² TSN, March 11, 2010, p. 9.

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;

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed:²³

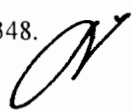
(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative 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.***

It is not amiss to state that R.A. No. 10640, which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that “while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government’s campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts.”²⁴ Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that “compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were

²³ *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

²⁴ Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.



involved in the punishable acts apprehended and, thus, it is difficult to get the most grassroots elected public official to be a witness as required by law.”²⁵

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for “certain adjustments so that we can plug the loopholes in our existing law” and ensure [its] standard implementation.”²⁶ Senator Sotto explained why the said provision should be amended:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.

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Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase “justifiable grounds.” There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted.

²⁵ *Id.*

²⁶ *Id.*

Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.²⁷

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given a copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”²⁸

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.²⁹ Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.³⁰ Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.³¹

As correctly noted by the trial court, the police officers testified that there was an inventory prepared by PO1 Gorospe at the police station, but failed to submit in evidence the said document, and that they did not have any *barangay* official or media person with them during the operation.³² Even so, the prosecution proffered no justifiable reason why the police officers dispensed with the requirements of taking of photograph and conduct of physical inventory of the accused and the seized items in the presence of representatives from the DOJ and the media, and an elected public official, not just at the crime scene but also at the police station.

²⁷ *Id.* at 349-350.

²⁸ *People v. Sagana*, G.R. No. 208471, August 2, 2017.

²⁹ *People v. Miranda, supra*; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

³⁰ *People v. Saragena*, G.R. No. 210677, August 23, 2017.

³¹ *Id.*

³² *Recordós*, pp. 181-182; Decision dated July 5, 2011, pp. 18-19.

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125³³ of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity.³⁴ The presumption may only arise when there is a showing that the apprehending officers/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.³⁵


At this point, it is not amiss for the *ponente* to express his position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, the *ponente* agrees with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*³⁶ that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each

³³ Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

³⁴ *People v. Ramirez, supra.*

³⁵ *People v. Gajo*, G.R. No. 217026, January 22, 2018.

³⁶ G.R. No. 202206, March 5, 2018.



particular case.” As aptly pointed out by Justice Leonardo-De Castro, the Court’s power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

The *ponente* subscribes to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

The *ponente* further submits that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165, to wit:**

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

Section 32. Liability to a Person Violating Any Regulation Issued by the Board. – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

At any rate, the burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.³⁷ When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right,

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People v. T/Sgt. Angus, Jr., 640 Phil. 552, 566 (2010).




irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown.³⁸ For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from appellant, and to prove as a fact any justifiable reason for non-compliance with Section 21 of R.A. No. 9165 and its IRR, appellant must be acquitted of the crimes charged.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated April 16, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05641, which affirmed the judgment of the Regional Trial Court of Binangonan, Rizal, Branch 70, in Criminal Cases Nos. 07-476 and 07-477 for violation of Sections 5 and 11, Article II of R.A. No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, respectively, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Vicente Sipin y De Castro is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

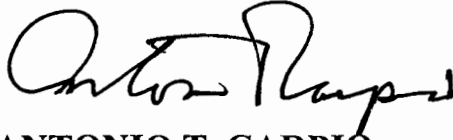
Let copies of this Decision be furnished the Department of Justice (DOJ) and the Philippine National Police (PNP) for their information and guidance.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

³⁸ *Zafra, et al. v. People*, 686 Phil. 1095, 1109 (2012).

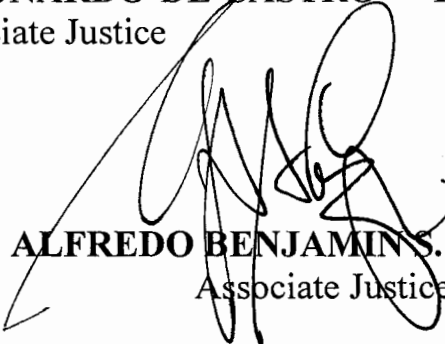
WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice


M. Bernabe
ESTELA M. PERLAS BERNABE
Associate Justice



ALFREDO BENJAMINS S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act
No. 296, The Judiciary Act of
1948, as amended)