



Republic of the Philippines
Supreme Court
Manila

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Wilfredo V. Lapid
WILFREDO V. LAPID
Division Clerk of Court
Third Division

DEC 19 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 212192

Present:

- versus -

PERALTA, *J.*, Chairperson,
LEONEN,
GESMUNDO
REYES, JR., J.C., and
HERNANDO,* *JJ.*

METOKUR ABDULA y MAMA
@ "TOKAY," "MIKE,"
Accused-Appellant.

Promulgated:

November 21, 2018

Wilfredo V. Lapid

X ----- X

DECISION

GESMUNDO, J.:

The procedures laid down by law on the handling and inventory of dangerous drugs seized from an accused during a buy-bust operation are non-negotiable safeguards of constitutional rights. To overcome the constitutional presumption of innocence and secure a judgment of conviction, the prosecution must sufficiently justify any deviation from the statutorily prescribed procedure committed by law enforcers.

The Case

This is an appeal filed by Metokur M. Abdula¹ (*accused-appellant*) seeking to reverse the May 29, 2012 Decision² of the Court of Appeals (CA),

* On Wellness Leave.

¹ Also referred to as "Metokur Abdullah," which appears in records, pp. 5 and 20, Sinumpaang Kontra Salaysay and Inventory of Seized Properties/Items, respectively.

² *Rollo*, pp. 2-16, penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justice Magdangal M. De Leon and Associate Justice Francisco P. Acosta.

AG

in CA-G.R. CR-HC No. 04106 which affirmed the Decision³ of the Regional Trial Court of Manila, Branch 2 (*RTC*), in Crim. Case No. 07-258313. The RTC convicted the accused-appellant for violation of Section 5 in relation to Section 26, Article II of Republic Act (*R.A.*) No. 9165. It sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, without subsidiary imprisonment in case of insolvency.

In an Information⁴ dated December 10, 2007, the accused-appellant was indicted for the illegal sale of dangerous drugs, as follows:

That on or about October 24, 2007, in the City of Manila, Philippines, the said accused not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale Three (3) heat[-]sealed transparent plastic sachets containing the following:

FOUR POINT ONE SIX NINE ZERO GRAMS [*sic*]
(4.1690) GRAMS

FOUR POINT TWO THREE SIX SIX (4.2366) GRAMS

ZERO POINT ZERO FOUR EIGHT ONE (0.0481)
GRAMS

of white crystalline substance known as shabu, containing methylamphetamine⁵ hydrochloride, a dangerous drug.

Contrary to law.

Antecedents

Version of the Prosecution

On October 24, 2007, at about 7 o'clock in the morning, a confidential informant (*informant*) went to the Office of the Special Enforcement Group, Metro Regional Office of the Philippine Drug Enforcement Agency (*PDEA*). He reported to Senior Police Officer 3 Leo Letrodo (*SPO3 Letrodo*) that a certain "Mike" was illegally peddling dangerous drugs in Metro Manila and that he could easily purchase such

³ *CA rollo*, pp. 12-20, penned by Presiding Judge Alejandro G. Bijasa.

⁴ Records, p. 1.

⁵ Also known as "methamphetamine" – a potent central nervous system stimulant commonly found in recreational drugs.

contrabands from him.⁶ In response, SPO3 Letrodo immediately formed a buy-bust team (*team*). He instructed the informant to contact Mike and to place an order of ten (10) grams of methamphetamine hydrochloride (*shabu*) worth ₱36,000.00.⁷

At the briefing, SPO3 Letrodo designated Intelligence Officer 1 Liwanag B. Sandaan (*IO1 Sandaan*), along with the informant, as the poseur-buyer and assigned Police Officer 2 Anatomy B. Gabona (*PO2 Gabona*) as the arresting officer.⁸ The team prepared one bundle of “boodle” money consisting of bill-sized paper. IO1 Sandaan placed a genuine ₱500.00 bill bearing her initials “LBS”⁹ on top of it and a fake ₱500.00 bill at the bottom.¹⁰ The team agreed that the buy-bust transaction would take place at ACE Hardware store located at the 2nd floor of SM City Manila.¹¹

The team arrived at SM City Manila before 11 o’clock in the morning.¹² SPO3 Letrodo then directed the informant to contact Mike through his phone.¹³ After the conversation, the informant told the team that Mike would be arriving anytime.¹⁴ While the informant and IO1 Sandaan waited for Mike in front of ACE Hardware store, the rest of the team positioned themselves nearby. IO1 Sandaan carried the bag containing the boodle money.¹⁵

After thirty minutes, Mike arrived carrying a small blue SM plastic bag. He approached the informant who introduced IO1 Sandaan as the buyer.¹⁶ When Mike asked for the payment, IO1 Sandaan handed him the bag she was carrying and told him that the money was inside.¹⁷ In return, Mike gave the blue SM plastic bag to IO1 Sandaan and told her that the drugs were inserted in the slippers inside the bag.¹⁸ After receiving the bag, IO1 Sandaan scratched her head which was the pre-arranged signal to the

⁶ TSN (Testimony of IO1 Liwanag Sandaan), April 2, 2008, pp. 7-8.

⁷ Id. at 9-10; see also records, p. 9.

⁸ Id. at 9 and 15.

⁹ Id. at 12 and 29.

¹⁰ Id. at 14.

¹¹ Records, p. 9.

¹² TSN (Testimony of IO1 Liwanag Sandaan), April 2, 2008, p. 17.

¹³ Id. at 19.

¹⁴ Id.

¹⁵ Id. at 19-20.

¹⁶ Id. at 19-21.

¹⁷ Id. at 21-22.

¹⁸ Id.

buy-bust team. PO2 Gabona promptly approached them, introduced himself, and arrested Mike.¹⁹ PO2 Gabona also recovered the marked money.²⁰

The team then proceeded to the Security Office of SM City Manila. There they pried the slippers open in the presence of Mike and the SM security guard and found the suspected drugs inside.²¹ The investigator took pictures of the small blue SM plastic bag and the slippers that concealed the suspected dangerous drugs.²² Thereafter, the team brought Mike to the barangay hall near SM City Manila. In the presence of Barangay Chairperson Dr. Salvacion Pomperada (*Barangay Chair Pomperada*), they inventoried the seized items.²³ IO1 Sandaan marked the illegal drug specimens contained in three (3) separate clear plastic sachets with her initials EXH "A" LBS 10-24-07, EXH "B" LBS 10-24-07, and EXH "C" LBS 10-24-07. Next, she prepared a request for laboratory examination²⁴ which was signed by SPO4 Janilo D. Abranilla, as well as a request for drug test,²⁵ signed by SPO3 Letrodo.

On the same day, Forensic Chemist Frances Anne Q. Matatquin (*Chemist Matatquin*) of the PDEA Laboratory Service received the request for laboratory examination. She proceeded to conduct a qualitative chemical analysis of the specimens submitted by IO1 Sandaan.²⁶ Subsequently, Chemist Matatquin issued Chemistry Report No. PDEA-DD-2007-149²⁷ confirming the presence of methamphetamine hydrochloride in the specimens.

Version of the Accused

The accused-appellant testified that, on October 24, 2007, at around 1:30 in the afternoon, he was at SM City Manila with his children²⁸ to buy them school supplies.²⁹ They had just stepped outside the mall, when the law enforcers suddenly approached to arrest him and then put him in handcuffs.³⁰ Perplexed, he asked why he was being apprehended. The arresting officers

¹⁹ Id. at 22.

²⁰ Id. at 23.

²¹ Id. at 22.

²² Id. at 24-25.

²³ TSN (Testimony of PO2 Anatomy Gabona), September 3, 2008, p. 14.

²⁴ Records, pp. 14-15.

²⁵ Id. at 17.

²⁶ Id.; see also TSN (Testimony of Frances Anne Q. Matatquin), October 22, 2008, pp. 7-8.

²⁷ Id. at 16.

²⁸ Aged ten (10) years old, seven (7) years old and five (5) years old, according to the accused-appellant.

²⁹ TSN (Testimony of Metokur Abdula y Mama), December 3, 2008, pp. 5, 7 and 18-19.

³⁰ Id. at 6.

told him that he was accused of illegally selling dangerous drugs.³¹ The arresting officers ordered his children to go home.³² Thereafter, he was made to ride in the arresting officers' service vehicle and was brought to Quezon City.³³

When they arrived at Quezon City, the arresting officers demanded ₱1,000,000.00 from the accused-appellant which he claimed he could not produce.³⁴ Because of his refusal to produce the amount, the accused-appellant remained in handcuffs all night. After being detained at the Quezon City precinct for one month,³⁵ he was brought to Camp Crame to undergo a drug test for two hours and, thereafter, brought back to the Quezon City precinct for detention.³⁶ Later, he was detained at the Manila City Jail.³⁷

The accused-appellant's son Najib Abdulla³⁸ (*Najib*) corroborated that, on the day of the incident at around 10 o'clock in the morning, he was with his father strolling at SM City Manila.³⁹ After they had lunch, they bought a t-shirt and decided to go home.⁴⁰ As they were coming out of the mall, a group of men with a female companion surrounded them, and then frisked and handcuffed his father.⁴¹ Najib, embracing his father, asked why the latter was being arrested but he was ordered to go home.⁴² Once home, he narrated the incident to his mother and uncle who, shortly, went with him to Kamuning, Quezon City, where his father was being detained.⁴³ According to Najib, the police officers told them that "they were able to recover something from [his] father" which caused his arrest.⁴⁴

Regional Trial Court Ruling

In rendering a judgment of conviction, the RTC ratiocinated that: (a) the accused-appellant's claim that he was arrested without violating any law remained unsubstantiated especially so that his testimony and that of Najib's differed materially as to who was with them during the time of the

³¹ Id.

³² Id. at 7.

³³ Id. at 8.

³⁴ Id. at 9.

³⁵ Id. at 9-10.

³⁶ Id. at 10-11.

³⁷ Id. at 11.

³⁸ Also referred to as "Najib Abdullah," which appears in records, p. 91 (Minutes of the Session of July 22, 2009).

³⁹ TSN (Testimony of Najib Abdulla), July 22, 2009, pp. 3-5.

⁴⁰ Id. at 4-5.

⁴¹ Id. at 5-6.

⁴² Id. at 6.

⁴³ Id. at 6-7.

⁴⁴ Id. at 7.

arrest;⁴⁵ (b) even assuming *arguendo* that the accused-appellant's claim of extortion was true, the alleged ₱1,000,000.00-demand by the PDEA agents happened *after* the consummation of the offense;⁴⁶ (c) the accused-appellant "failed to show any ill motive" on the part of the PDEA agents through clear and convincing evidence;⁴⁷ (d) the integrity of the drug specimens seized from the accused-appellant was preserved and the chain of custody was not shown to have been broken;⁴⁸ (e) the defense of frame-up was viewed with disfavor because it is commonly used as a standard line of defense and could be easily concocted;⁴⁹ (f) the positive identification of the accused-appellant by the prosecution's witnesses prevails over the former's defense of denial;⁵⁰ and (g) the pieces of evidence offered by the prosecution had clearly established the guilt of the accused-appellant beyond reasonable doubt.⁵¹ The dispositive portion of the RTC decision reads:

WHEREFORE, finding accused, Metokur Abdula y Mama @ "Tokay," "Mike," **GUILTY** beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon proper receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.⁵²

Court of Appeals Ruling

In affirming the RTC judgment, the CA held that: (a) the defenses of denial and frame-up raised by the accused-appellant were not substantiated with clear and convincing evidence and would not prevail over the positive and credible testimonies of the prosecution's witnesses;⁵³ (b) Najib's testimony "is necessarily suspect" because it contradicted the accused-appellant's testimony which makes one or both accounts a product of mere concoction;⁵⁴ (c) the RTC could not be faulted for not believing the

⁴⁵ CA *rollo*, p. 17.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 18.

⁴⁹ *Id.*

⁵⁰ *Id.* at 19.

⁵¹ *Id.*

⁵² *Id.* at 19-20; records, pp. 106-107.

⁵³ *Rollo*, p. 11.

⁵⁴ *Id.* at 11-12.

contradictory stories of both the accused-appellant and his son, Najib;⁵⁵ (d) the RTC correctly ruled that the chain of custody of the dangerous drugs specimens was not broken and that the integrity and evidentiary value of such contrabands were not compromised;⁵⁶ and (e) the accused-appellant simply failed to prove his theory of extortion and frame-up.⁵⁷ The decretal portion of the CA decision reads:

WHEREFORE, the appeal is **DISMISSED**. The Decision dated July 30, 2009 of the Regional Trial Court of Manila, Branch 2, in Criminal Case No. 07-258313 is **AFFIRMED in toto**.

SO ORDERED.⁵⁸

Parties' Arguments

Before the Court, both the prosecution and the accused-appellant adopted their respective briefs filed before the CA. Their arguments are briefly summarized as follows:

The Accused-Appellant's Arguments

The accused-appellant faults the RTC for rendering a judgment of conviction because: (a) IO1 Sandaan was not authorized to make the arrest in a buy-bust operation because of the nature of her position as intelligence officer;⁵⁹ (b) the prosecution also failed to adduce as evidence the appointment papers of IO1 Sandaan to prove her authority to engage in a buy-bust operation;⁶⁰ (c) IO1 Sandaan's testimony failed to establish that the accused-appellant and "Mike" are of the same identity because she merely obtained her knowledge from a confidential informant;⁶¹ (d) IO1 Sandaan's testimony is also doubtful and inconsistent because she testified on direct examination that it was the confidential informant who called up "Mike" through his phone but, later on, testified on cross-examination that said informant had no phone;⁶² (e) the arrest was irregular because the accused-appellant merely handed a plastic bag to IO1 Sandaan without any confirmation from the latter that the same plastic bag contained the subject

⁵⁵ Id. at 13.

⁵⁶ Id. at 14.

⁵⁷ Id. at 15.

⁵⁸ Id. at 16.

⁵⁹ CA *rollo*, pp. 40-44.

⁶⁰ Id. at 44.

⁶¹ Id. at 46-48.

⁶² Id. at 48-49.

dangerous drugs;⁶³ (f) the buy-bust operation was irregular because the subject specimens of dangerous drugs were not even reflected in the pictures adduced by the prosecution;⁶⁴ (g) the first link in the chain of custody was not proven because, at the time of the accused-appellant's arrest, IO1 Sandaan and PO2 Gabona did not even see the dangerous drug specimens;⁶⁵ (h) Barangay Chair Pomperada, who was present during the inventory of the subject dangerous drugs, did not even take part in the buy-bust operation;⁶⁶ and (i) the prosecution never identified and presented the specific person that prepared the inventory.⁶⁷

The Prosecution's Arguments

The prosecution as represented by the Office of the Solicitor General, on the other hand, agreed with the RTC's disposition because: (a) all the elements pertaining to the illegal sale of dangerous drugs had been proven sufficiently by the prosecution;⁶⁸ (b) aside from his "bare-faced" denial, the accused-appellant failed to present any other independent proof to substantiate the same;⁶⁹ (c) the accused-appellant failed to give any reason why IO1 Sandaan and PO2 Gabona would falsely ascribe to him the serious crime of illegally selling dangerous drugs;⁷⁰ (d) the accused-appellant's identity had been confirmed by the positive testimony of IO1 Sandaan;⁷¹ (e) the identity of the *corpus delicti* was sufficiently documented by the buy-bust team;⁷² (f) the accused-appellant belatedly questioned and effectively waived the supposed illegality of his arrest because he voluntarily allowed himself to be arraigned instead of filing a motion to quash the Information;⁷³ and (g) the findings of the RTC pertaining to the credibility of the prosecution's witnesses are entitled to great respect, if not finality.⁷⁴

OUR RULING

Preliminary Considerations

Some criminal cases involve an interplay of two seemingly contending presumptions: the presumption of innocence and the

⁶³ Id. at 50-62.

⁶⁴ Id. at 58.

⁶⁵ Id. at 63-67.

⁶⁶ Id. at 68.

⁶⁷ Id. at 72-75.

⁶⁸ Id. at 112-116.

⁶⁹ Id. at 116-117.

⁷⁰ Id. at 117-118.

⁷¹ Id. at 118-119.

⁷² Id. at 120-121.

⁷³ Id. at 122.

⁷⁴ Id. at 122-123.

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presumption of regularity in the conduct of official duties. The opposing ideological interaction of these presumptions is common in the prosecution of drug-related offenses. Hence, the Court deems it necessary to reiterate past jurisprudential precepts on the proper application of both presumptions.

On one hand, the accused in a criminal case enjoys the constitutional presumption of innocence.⁷⁵ To overturn this presumption, the prosecution must proffer proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty as to convince and satisfy the conscience of those who act in judgment.⁷⁶ The constitutional presumption of innocence requires the courts to take "a more than casual consideration" of every circumstance or doubt favoring the innocence of the accused.⁷⁷ Here, the State through the prosecution, carries the *onus probandi* or **burden of proof** in establishing the guilt of the accused beyond reasonable doubt, as a consequence of the tenet "*ei incumbit probation, qui dicit, non qui negat,*" that "he who asserts, not he who denies, must prove"; and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime.⁷⁸ Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the **burden of evidence** then *shifts* to the defense. The defense shall then test the strength of the prosecution's case either by showing that no crime was, in fact, committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused.⁷⁹

On the other hand, the presumption of regularity in the performance of official duty comes into play *only when* an accused interposes the defense of frame-up or extortion which he or she is bound to establish by clear and convincing evidence.⁸⁰ To rebut this presumption, the accused must present affirmative evidence of irregularity or of failure to perform one's duty.⁸¹ More importantly, such presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.⁸²

⁷⁵ *People v. Claro*, G.R. No. 199894, April 5, 2017.

⁷⁶ *Franco v. People*, 780 Phil. 36, 43 (2016).

⁷⁷ *People v. Ratunil*, 390 Phil. 218, 235 (2000).

⁷⁸ *People v. Wagas*, 717 Phil. 224, 241 (2013).

⁷⁹ *People v. Rodrigo, et al.*, 586 Phil. 515, 527 (2008).

⁸⁰ See *People v. Rosialda*, 643 Phil. 712, 725 (2010).

⁸¹ See *Bustillo, et al. v. People*, 634 Phil. 547, 556 (2010).

⁸² See *People v. Arposeple, et al.*, G.R. No. 205787, November 22, 2017.

More clearly, the presumption of regularity in the performance of duty cannot prevail over the stronger presumption of innocence favoring the accused; otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.⁸³ Notwithstanding the jurisprudential *dictum* that the presumption of regularity cannot by itself prevail over the presumption of innocence, the defense must still be able to present clear and convincing evidence to overcome the presumption of regularity for the claim of frame-up or extortion to prosper.⁸⁴ Hence, in order to reconcile these apparently contradictory jurisprudential principles, there is a need to emphasize that **it is incumbent on the prosecution to *first* overcome the presumption of innocence in its evidence-in-chief before the accused can raise the defense of frame-up or extortion.** Only then can the prosecution raise the presumption of regularity in the performance of official duty. In turn, this triggers the subsequent requirement for the accused, seeking an acquittal, to rebut such presumption by presenting clear and convincing evidence to substantiate the defense of frame-up or extortion.

The Court, having laid out the procedural dynamics and conventional principles that govern criminal prosecutions, enumerates the following elements of the offense pertaining to the illegal sale of dangerous drugs. These are: (a) the identities of the buyer and the seller, the object of the sale and the consideration; and (b) the delivery of the thing sold and the payment for the thing.⁸⁵ What is material is the proof that **the transaction or sale actually took place**, coupled with the presentation in court of the *corpus delicti* as evidence.⁸⁶ In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense.⁸⁷

In the implementation of Section 5 of R.A. No. 9165, the Court has declared that a “buy-bust operation has been recognized in this jurisdiction as a legitimate form of entrapment of the culprit.”⁸⁸ Since a buy-bust operation ultimately leads to the arrest and corresponding search of the person of the accused without any warrant, the law has set up procedural safeguards for the protection of the accused’s constitutional rights. One safeguard frequently referred to in past rulings involving the illegal sale or possession of dangerous drugs is “chain of custody.” This is the “duly

⁸³ *People v. Reyes*, 806 Phil. 513, 538-539 (2016).

⁸⁴ See *People v. Agulay*, 588 Phil. 247, 278 (2008).

⁸⁵ See *People v. Arenas*, 791 Phil. 601, 608 (2016).

⁸⁶ *People v. Baticolon, et al.*, 762 Phil. 468, 475 (2015).

⁸⁷ *People v. Ismael*, G.R. No. 208093, February 20, 2017.

⁸⁸ *People v. Bartolome*, 703 Phil. 148, 152 (2013).

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."⁸⁹ On account of the unique characteristic of narcotic substances that renders them not readily identifiable, these are subject to scientific analysis to determine their composition and nature.⁹⁰ Here, the prosecution **must account for each link in the chain of custody** of the dangerous drug, from the moment of seizure from the accused until presented in court as proof of the *corpus delicti*.⁹¹ The rule ensures that unnecessary doubts concerning the identity of the evidence are removed. It seeks a guarantee that the substance illegally possessed in the first place is the same offered in court and is established with the same unwavering exactitude as that requisite to make a finding of guilt.⁹²

Jurisprudence has been instructive in illustrating the **links** in the chain that need to be established, to wit: (a) the seizure and marking, if practicable, of the **illegal drug recovered from the accused** by the apprehending officer; (b) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (c) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (d) the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁹³ Concomitantly, Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165 requires that the physical inventory and photograph of the seized items shall be conducted where the search warrant is served. Otherwise, warrantless seizures shall be conducted at the **nearest police station** or at the **nearest office** of the apprehending officer/team.⁹⁴ The manner and timing of the marking of seized drugs or related items are crucial in proving the chain of custody.⁹⁵ Marking of seized items is done to ensure that these are the items that enter the chain and eventually the same ones offered in evidence. Marking should be done in the presence of the apprehended violator and immediately upon confiscation. This is to protect innocent persons from dubious and concocted searches and to shield the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft.⁹⁶

⁸⁹ See *People v. Havana*, 776 Phil. 462, 471 (2016).

⁹⁰ *Mallillin v. People*, 576 Phil. 576, 588 (2008).

⁹¹ *People v. Barte*, G.R. No. 179749, March 1, 2017.

⁹² See *People v. Climaco*, 687 Phil. 593, 605 (2012).

⁹³ *People v. Siaton*, 789 Phil. 87, 98-99 (2016).

⁹⁴ *People v. Macud*, G.R. No. 219175, December 14, 2017.

⁹⁵ *People v. Mendoza*, 736 Phil. 749, 761 (2014).

⁹⁶ See *People v. Salcena*, 676 Phil. 357, 379 (2011).

Accordingly, the State must prove beyond reasonable doubt all the elements of the crime charged as well as the complicity or participation of the accused in every criminal prosecution.⁹⁷ However, proof beyond reasonable doubt does not mean the degree of proof excluding the possibility of error and producing absolute certainty.⁹⁸ Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.⁹⁹ Such proof satisfies the court, keeping in mind the presumption of innocence, as it precludes every reasonable hypothesis except that which it is given to support.¹⁰⁰ Furthermore, while not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience.¹⁰¹ Consequently, when moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.¹⁰²

However, not all procedural lapses committed by law enforcers will entitle the accused to an acquittal.¹⁰³ In reality, the desire for a perfect and unbroken chain of custody rarely occurs.¹⁰⁴ This is the reason why the Court and, eventually, the Congress when it enacted R.A. No. 10640,¹⁰⁵ both recognized that noncompliance with the prescribed procedural requirements would not necessarily render the seizure and custody of the items void and invalid, provided that: (a) there is a **justifiable ground** for such **noncompliance**; and (b) the integrity and evidentiary value of the seized items are properly preserved.¹⁰⁶ Accordingly, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the *same* illegal drug actually recovered from the accused-appellant. Otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.¹⁰⁷

⁹⁷ See *People v. Maraorao*, 688 Phil. 458, 466 (2012).

⁹⁸ *People v. T/Sgt. Angus, Jr.*, 640 Phil. 552, 564 (2010).

⁹⁹ *People v. Tadepa*, 314 Phil. 231, 236 (1995).

¹⁰⁰ *Dizon v. People*, 524 Phil. 126, 146 (2006).

¹⁰¹ *Daayata, et al. v. People*, G.R. No. 205745, March 8, 2017.

¹⁰² *People v. Baga*, 649 Phil. 232, 254 (2010).

¹⁰³ See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

¹⁰⁴ See *People v. Gayoso*, G.R. No. 206590, March 27, 2017.

¹⁰⁵ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" (July 15, 2014).

¹⁰⁶ *People v. Martinez, et al.*, 652 Phil. 347, 372 (2010).

¹⁰⁷ *People v. Pagaduan*, 641 Phil. 432, 442-443 (2010).

Propriety of the Buy-Bust Operation

It must be stressed that in criminal cases an appeal throws the entire case wide open for review. The reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.¹⁰⁸ In this case, the Court is forced to re-evaluate the evidence on record. It cannot turn a blind eye to the fact that the prosecution never justified the failure of the team to photograph the seized dangerous drugs after the arrest of the accused-appellant. It is crucial to establish the first link in the chain of custody: “the seizure and marking of the illegal drug **recovered from the accused** by the apprehending officer.”

A thorough examination of the photographs¹⁰⁹ taken by the team showed the seized items merely included a marked P500.00 bill, a small blue SM plastic bag and a pair of blue slippers. Although the photograph labeled as Exhibit M-1¹¹⁰ showed that the upper right side of the right slipper appeared to be cut apart, **no image of the subject drugs** allegedly found inside the slippers **was captured** in the same photograph. It is puzzling that not one of the prosecution's witnesses gave an explanation as to why they were able to photograph the confiscated blue SM plastic bag and a pair of slippers **but failed to photograph the three (3) sachets of dangerous drugs they had seized**. This is evident in the exchanges between Assistant Prosecutor Alexander T. Yap and IO1 Sandaan in the latter's direct examination, as follows:

Asst. Pros. Yap: Do you have the photographs of the three (3) pieces of plastic, just beside the plastic sachets containing drugs?

Witness:

Atty. Villacorta: Your Honor, the witness cannot answer.

Court: Alright. Make that on record.¹¹¹

Such gross and unexplained omission automatically discredits the “regularity” in the performance of duty by the handling law enforcers. It likewise raises serious doubts as to the existence of the *corpus delicti* as required by the first link in the chain of custody. This is fatal to the

¹⁰⁸ *Ramos, et al. v. People*, 803 Phil. 775, 783 (2017).

¹⁰⁹ Records, pp. 25-27 (Exhibits “H,” “H-1,” “L,” “L-1,” “M” & “M-1”).

¹¹⁰ *Id.* at 27.

¹¹¹ TSN (Testimony of IO1 Liwanag Sandaan), April 2, 2008, pp. 25-26.

prosecution's cause even if the accused-appellant had signed the inventory.¹¹² This glaring gap in the first link of the chain of custody leaves a lingering doubt whether the subject drugs were actually recovered from the accused-appellant. Speculation and probabilities that the contrabands were not received from the accused-appellant cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt.¹¹³ Such lack of explanation and justification to photograph the seized dangerous drugs directly contravenes the requirements in Sec. 21 of R.A. No. 9165. The Act is precisely legislated to protect the constitutional right of the accused from unreasonable search and seizure by State agents.

On this point, the Court reiterates the jurisprudential *dictum* that a discrepancy or gap in the chain of custody would immediately affect the proof of *corpus delicti*.¹¹⁴ Such negates all elements of the offense of illegal sale of dangerous drugs. Aside from the identity of the dangerous drugs being tainted with serious doubt, the manner of delivery as well as the corresponding payment speak of uncertainty. For purposes of presenting evidence, the Court emphasizes that it is not the absence of a photograph of the confiscated item which **renders it inadmissible as evidence.**¹¹⁵ **Rather, it is the lack of justification to do so.**

Moreover, the records do not indicate that a representative of the DOJ and a member of the media were present with the elected official, Barangay Chair Pomperada, during the marking and inventory of the seized items.¹¹⁶ Also, the prosecution offered no explanation as to why the team failed to comply with the explicit requirements in Sec. 21 of R.A. No. 9165 pertaining to required buy-bust witnesses. This was admitted by PO2 Gabona in the cross-examination conducted by Atty. Alexander A. Villacorta, as follows:

- | | |
|---------------------|--|
| [Atty. Villacorta:] | Were you accompanied by any Media [representative] in going to the target area? |
| [PO2 Gabona:] | None (<i>sic</i>), sir. |
| [Atty. Villacorta:] | How about any representative from the DOJ, were you accompanied, before proceeding to the target area? |
| [PO2 Gabona:] | None (<i>sic</i>), sir. ¹¹⁷ |

¹¹² Records, p. 20 (Exhibit "F").

¹¹³ *People v. Salidaga*, 542 Phil. 295, 306 (2007).

¹¹⁴ See *People v. Kamad*, 624 Phil. 289, 311 (2010).

¹¹⁵ See *Palo v. People*, 780 Phil. 681, 694-695 (2016).

¹¹⁶ Records, p. 20 (Exhibit "F").

¹¹⁷ TSN (Testimony of PO2 Anatomy Gabona), September 3, 2008, p. 13.

Agd

Because of this glaring omission, the Court cannot conclude with moral certainty that the transaction actually happened because the source of the dangerous drugs had become highly uncertain. The cross-examination of PO2 Gabona effectively tainted the existence and integrity of the *corpus delicti*. Except for Barangay Chair Pomperada who was present during the inventory of the seized items, all the other statutorily mandated witnesses were absent during the buy-bust operation and preparation of the inventory. A reasonable hypothesis that the source of the dangerous drugs was from someone else other than the accused-appellant is not far-fetched and cannot be ignored. Therefore, an acquittal based on reasonable doubt as to the existence of the *corpus delicti* is warranted.

Concomitantly, the Court points out that even if the accused-appellant's defenses of extortion and frame-up are jurisprudentially recognized as weak, the prosecution must rest on its own merits and must not rely on the weakness of the defense.¹¹⁸ The CA and the RTC cannot heavily anchor their judgment of conviction on glaring inconsistencies of the accused-appellant and his son's testimonies. **Even before the accused-appellant's defenses are considered by the trial court, the pieces of evidence adduced by the prosecution should, by themselves, overcome the constitutional presumption of innocence.** We emphasize that the burden of proof is on the prosecution. Unless it discharges that burden, the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal.¹¹⁹ In fact, the Court had once held that "the judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn out during trial, for this would be a flagrant violation of a basic right which the courts are created to uphold."¹²⁰ This guarantees that the procedures are chronologically and logically consistent with the constitutional presumption of innocence.

It is noteworthy to remind the bench and the bar that prosecutions involving illegal sale of dangerous drugs depend largely on the credibility of the police officers who conduct the buy-bust operation.¹²¹ Unfortunately, the Court has repeatedly observed that, by the very nature of anti-narcotics operations, *i.e.*, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, greatly increase the

¹¹⁸ *People v. Santos*, 562 Phil. 458, 467 (2007).

¹¹⁹ *Marcos v. Sandiganbayan, et al.*, 357 Phil. 762, 783 (1998).

¹²⁰ *People, et al. v. Court of Appeals, et al.*, 361 Phil. 401, 417-418 (1999).

¹²¹ See *People v. Perondo*, 754 Phil. 205, 217 (2015).

possibility of abuse.¹²² Although mere procedural lapses in the conduct of a buy-bust operation are not *ipso facto* fatal to the prosecution's cause, so long as the integrity and the evidentiary value of the seized items have been preserved, **courts must still thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a "gross, systematic or deliberate disregard of the safeguards drawn by the law."**¹²³ Thus, courts are exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.¹²⁴

The Court found the need to weed out early from the courts' congested dockets any orchestrated or built-up drug-related cases. In *People v. Lim*,¹²⁵ the Court mandated compliance with the following policies:

- 1) In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR.
- 2) In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor, as well as the steps taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
- 3) If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
- 4) If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

Conclusion

The Court is not unaware that today's traffickers of dangerous or illegal drugs continue to devise novel ways to escape detection of their activities by law enforcers. They have learned to conduct their transactions even in plain sight with nary a hint of the exchange of contraband. We have

¹²² *People v. Tan, et al.*, 401 Phil. 259, 273 (2000).

¹²³ *People v. Ancheta, et al.*, 687 Phil. 569, 578-579 (2012).

¹²⁴ *People v. Rebotazo*, 711 Phil. 150, 162 (2013).

¹²⁵ G.R. No. 231989, September 4, 2018.


encouraged law enforcers to come up with constitutionally and statutorily valid ways to apprehend offenders. This is so that the aims of R.A. No. 9165 are realized and that civil liberties are not violated. While this is easier said than done, any difficulty may be tempered by conscious and circumspect adherence to procedural safeguards in the conduct of a buy-bust operation. One way is for law enforcers to *first ascertain the existence of the subject contraband immediately after a body search* of the accused and *seizure* of any illegal items found in his or her person.

The presence of irregularity in carrying out the statutorily mandated procedure in the handling of dangerous drugs during buy-bust operations automatically destroys the presumption of regularity in the performance of duty. In effect, the burden is *shifted* to the prosecution to justify through evidence the procedural lapses committed by law enforcers in the custodial handling of the seized dangerous drugs. Consequently, the prosecution's failure to justify such lapses entitles the accused to an acquittal based on reasonable doubt.

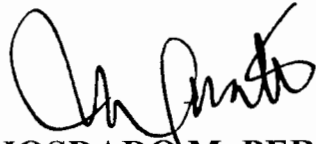
WHEREFORE, in view of the foregoing reasons, the May 29, 2012 Decision of the Court of Appeals in CA-G.R. CR HC No. 04106 is **REVERSED** and **SET ASIDE**. Metokur M. Abdula is **ACQUITTED** of the charge of violating Section 5 of R.A. No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is hereby **ORDERED** to **IMMEDIATELY RELEASE** the accused-appellant from custody, unless he is being held for some other lawful cause, and to inform the Court of the action taken thereon within five (5) days from receipt of this Decision.

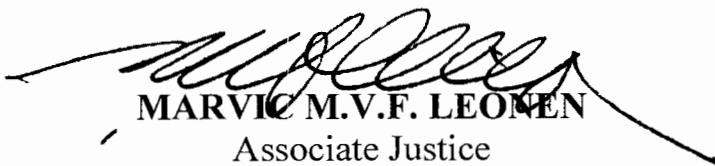
SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

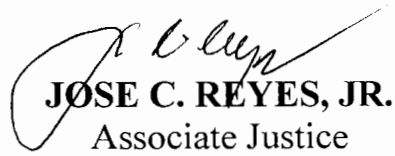
WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice
Chairperson



MARVIC M.V.F. LEONEN
Associate Justice

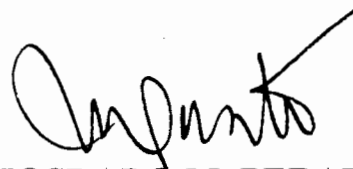


JOSE C. REYES, JR.
Associate Justice

(On Wellness Leave)
RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

I attest 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.



DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division



CERTIFICATION

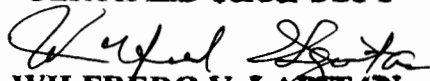
Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**

Senior Associate Justice

(Per Section 12, R.A. 296,

The Judiciary Act of 1948, as amended)

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

DEC 19 2018

