



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 233653

Present:

LEONARDO-DE CASTRO, C.J.,
Chairperson,

BERSAMIN,
DEL CASTILLO,*
JARDELEZA, and
TIJAM, JJ.

- versus -

Promulgated:

RICARDO GUANZON y CENETA,
Accused-Appellant,

SEP 05 2018

[Signature]

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DECISION

TIJAM, J.:

In light of the recent surge in drug cases as a result of the ongoing campaign by the administration against the drug epidemic faced by the country, it is timely for this Court to stress, with utmost importance, the need to strictly comply with Section 21 of Republic Act (R.A.) No. 9165 as amended by R.A. No. 10640 on the custody and disposition of evidence. Where the State fails to comply with the said rules, the Court imposes upon the prosecution the duty to present evidence that would demonstrate the identity of each individual in the chain of custody, and the manner of handling the *corpus delicti*, which is the dangerous drug itself. Only then will the Court be able to ensure that presumption of innocence, a primordial right enshrined under the Constitution, is accordingly bestowed upon the accused.

* On official leave.

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This is an appeal from the Decision¹ dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08152, affirming *in toto* the Decision² dated February 18, 2016 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Criminal Case Nos. 03-26225 and 03-26226, finding accused-appellant Ricardo Guanzon y Ceneta (Guanzon) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Facts of the Case

In two separate Informations, Guanzon was charged for violation of Sections 5 and 11 (Illegal Sale and Possession of Dangerous Drugs), Article II of R.A. No. 9165, *viz*:

Criminal Case No. 03-26225

That on or about the 28th day of July 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to PO2 Vandever D. Hernandez, who acted as a poseur buyer, one (1) heat-sealed transparent plastic sachet containing 0.04 gram of white crystalline substance, for and in consideration of the sum of ₱200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave positive result to the tests for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.³

Criminal Case No. 03-26226

That on or about the 28th day of July 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess/use any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat sealed transparent plastic sachet containing 0.01 gram of white crystalline substance, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave positive result to the tests for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

¹ Penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Jose C. Reyes, Jr. and Nina G. Antonio-Valenzuela; *rollo*, pp. 2-18.

² Penned by Acting Presiding Judge Leili C. Suarez; *CA rollo*, pp. 54-61.

³ Records (Crim. Case No. 03-26225), p. 1.

CONTRARY TO LAW.⁴

Upon arraignment, Guanzon, with the assistance of counsel, pleaded not guilty to both offenses charged. Thereafter, pre-trial and trial on the merits ensued.⁵

The Prosecution's version

On July 28, 2003, at around 7:00 o'clock in the morning, the elements of the Philippine National Police (PNP), Antipolo City, simultaneously received information from a concerned citizen and the Brgy. Task Force of Mambugan, Antipolo City, that Guanzon was selling dangerous drugs at No. 1622, Kingscup St., Antipolo Valley Subdivision, Brgy. Mambugan, Antipolo City.⁶

To apprehend Guanzon, the PNP immediately coordinated with the Philippine Drug Enforcement Agency (PDEA) and planned a buy-bust operation against Guanzon. The buy-bust team was composed of: SPO2 Gerry S. Abalos (SPO2 Abalos) as the team leader; PO2 Vandever D. Hernandez (PO2 Hernandez) as the poseur-buyer; PO3 Cesar F. Paulos (PO3 Paulos) and PO3 Sherwin G. Bulan (PO3 Bulan) as back-ups. The team also prepared two (2) 100 peso bills (with serial numbers Z387982 and CN570732), which were used as marked money for the operation.⁷

At around 9:00 o'clock in the morning of the same day, the team arrived at the target area. PO2 Hernandez alighted from their vehicle and approached Guanzon. He told Guanzon, "*tol e-eskor ako*", and gave him the marked money. In exchange, Guanzon handed him a small plastic sachet of white crystalline substance. Upon receipt of the plastic sachet, PO2 Hernandez lit his cigarette as the pre-arranged signal for the consummation of the sale. At this juncture, the rest of the team ran towards Guanzon and assisted in his arrest.⁸

PO3 Paulos frisked Guanzon and recovered from him the marked money. He also recovered from him another plastic sachet of white crystalline substance. Thereafter, they informed Guanzon of his constitutional rights and brought him, together with the confiscated sachets, to their office.⁹

At the office, PO2 Hernandez marked the sachet bought from Guanzon as specimen "A", and the sachet recovered from Guanzon as

⁴ Id. at 29 (Crim. Case No. 03-26226).

⁵ CA *rollo*, p. 55.

⁶ Id. at 56.

⁷ Id.

⁸ Id.

⁹ Id.

specimen “B”. Thereafter, the sachets were delivered by PO2 Hernandez to the PNP Crime Laboratory Service for chemical examination. Both plastic sachets of white crystalline substance yielded positive results for the presence of Methamphetamine Hydrochloride or *shabu* based on the Chemistry Report, dated July 28, 2003, executed by Forensic Chemist, PSI Angel C. Timario (PSI Timario).¹⁰

The Defense' version

On July 28, 2003 at around 9:30 o'clock in the morning, while Guanzon was with his friend, Sonny, at the latter's house in La Colina Subdivision, Antipolo City, a group of armed men forcibly entered the house and pointed guns at them. They looked for a man called “Jojo Hiwa”. When Guanzon told them that he is “Jojo Hiwa”, he was arrested by them.¹¹

When Guanzon asked the reason for his arrest, they told him to just explain at their office in Lores Plaza, Antipolo City.

At the office, the police officers frisked Guanzon and took all of his money including his cellphone and pack of cigarettes. However, in view of their failure to confiscate any dangerous drugs from him, they asked their asset instead to buy *shabu* which they eventually used to charge Guanzon of the crime of illegal sale and possession of dangerous drugs. They concocted a story that they caught Guanzon in the act of illegally selling and possessing dangerous drugs in a buy-bust operation conducted by their group against him.¹²

On February 18, 2016, the RTC promulgated its Decision,¹³ the dispositive portion of which, reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follow[s]:

1.) In Criminal Case No. 03-26225, Ricardo C. Guanzon is hereby found GUILTY beyond reasonable doubt of illegal sale of dangerous drugs, as defined and penalized under Section 5, 1st paragraph, Article II of R.A. No. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand (Php500,000.00) pesos; and,

2.) In Criminal Case No. 03-26226, Ricardo C. Guanzon is hereby found GUILTY beyond reasonable doubt of illegal possession of dangerous drugs, as defined and penalized under Section 11, 2nd paragraph, No. 3, Article II of R.A. No. 9165, and is hereby sentenced to

¹⁰ Id. at 57.

¹¹ Id. at 58.

¹² Id.

¹³ Id. at 54-61.

suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and to pay a fine of Three Hundred Thousand (Php300,000.00) pesos.

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

SO ORDERED.¹⁴

Guazon appealed his conviction to the Court of Appeals.

The CA's Ruling

In his Brief¹⁵, he argued, among others, that the police officers disregarded the mandatory procedures in the preservation of the integrity of the seized drugs under Section 21 of the Implementing Rules and Regulations (IRR) of R.A. No. 9165. In particular, no inventory and photographs were submitted and formally offered in court, and nowhere in the records showed that the buy-bust team contacted, or even made an attempt to do so, any representative from the media, the Department of Justice (DOJ), or any elected public official. Moreover, Guazon pointed out inconsistencies in the testimonies of the police officers as to how the buy-bust operation was conducted.

On May 31, 2017, the CA rendered a Decision¹⁶ affirming *in toto* the RTC Decision. The CA found that the inconsistencies referred to by Guazon were minor discrepancies and pertained to peripheral matters which did not affect the credibility of the police officers. It also ruled that the totality of the evidence adduced by the prosecution, both testimonial and documentary, showed an unbroken chain of custody.

Hence, this appeal.

Issue

The sole issue to be resolved by this Court is, whether the RTC and the CA erred in finding Guazon guilty beyond reasonable doubt of the crimes charged despite the alleged non-compliance with the mandatory requirements laid down under R.A. No. 9165 and its IRR.

Our Ruling

The appeal is meritorious.

¹⁴ Id. at 61.

¹⁵ Id. at 28-52.

¹⁶ Rollo, pp. 2-18..



To sustain convictions for illegal sale and illegal possession of dangerous drugs under R.A. No. 9165, the prosecution must sufficiently establish all the elements of the said crimes.

For illegal sale of dangerous drugs under Section 5, the following elements must first be established: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁷

For illegal possession of a dangerous drug under Section 11, it must be shown that: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated 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.¹⁸

Time and again, this Court has consistently held that in prosecutions for illegal sale and illegal possession of dangerous drugs, the *corpus delicti*, apart from the elements of the offense, must be established beyond reasonable doubt.¹⁹ In illegal drug cases, the *corpus delicti* is the illegal drug itself.²⁰ In other words, proving the existence of all the elements of the offense does not suffice to sustain a conviction. The State equally bears the obligation to prove the identity of the seized drug, failing in which, the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt.²¹

To ensure that the integrity and identity of the seized drugs in buy-bust operations have been preserved, the procedure for custody and disposition of the same is clearly delineated under Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, *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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and

¹⁷ *People v. Opiana*, 750 Phil. 140, 147 (2015).

¹⁸ *People v. Dela Cruz*, 744 Phil. 816, 825-826 (2014).

¹⁹ *Rontos v. People*, 710 Phil. 328, 336-337 (2013).

²⁰ *Id.*

²¹ *People v. Relato*, 679 Phil. 268, 277-278 (2012).

confiscation, **conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That **noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved** by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis ours)

x x x x

The Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of R.A. No. 9165 were also amended pursuant to R.A. No. 10640, as follows:

Section 1. Implementing Guidelines. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

A. Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph "a" of the IRR

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

A.1.1. The marking, physical inventory and photograph of the seized/confiscated items shall be conducted where the search warrant is served.

A.1.2. The marking is the placing by the apprehending officer or the poseur-buyer of his/her initial and signature on the item/s seized.

A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police



station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

A.1.4. In cases when the execution of search warrant is preceded by warrantless seizures, the marking, inventory and photograph of the items recovered from the search warrant shall be performed separately from the marking, inventory and photograph of the items seized from warrantless seizures.

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his/her representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.

A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.

A.1.7. To prevent switching or contamination, the seized items, which are fungible and indistinct in character, and which have been marked after the seizure, shall be sealed in a container or evidence bag and signed by the apprehending/seizing officer for submission to the forensic laboratory for examination.

A.1.8. In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may be performed at the plantation site. Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the *corpus delicti* of the seized/confiscated plant sources following the chain of custody of evidence.

A.1.9. Noncompliance, under justifiable grounds, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.



A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented.

A.1.11. The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventoried, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. The latter shall continue the chain as required in paragraph B.5 below.

x x x x

Although the incident in this case happened in 2003, the amendatory law, which bolsters the rule on chain of custody, should retroactively apply to Guanzon as it is more favorable to him.²² The rationale behind requiring observance of the foregoing procedure is clear from the exception found therein, *i.e.*, that the integrity and the evidentiary value of the seized items are properly preserved. This rationale had been the Court's guiding principle in excusing non-compliance with the said mandatory requirements.

In this case, We are tasked to review a conviction tainted with doubts on the integrity and identity of the seized drugs arising from inconsistencies in the testimonies of witnesses.

Bearing in mind that this is an appeal of a criminal case filed in accordance with Rule 122, Section 3(e), in relation to Rule 124, Section 13(c), of the Rules of Court, this Court is not confined to questions of law. The whole case is effectively open for review on both questions of law and of fact whether or not raised by the parties.²³

At the outset, We stress that the fact of non-compliance with the mandatory procedures under Section 21 of R.A. No. 9165 as amended by R.A. No. 10640 is not disputed in this case. The issue lies on whether the identity and integrity of the seized drugs were established beyond reasonable doubt despite the said non-compliance. As such, it is imperative upon this Court to examine the evidence establishing each link in the chain of custody

²² *People v. Doroja*, 305 Phil. 253 (1994).

²³ *People v. Dahil, et al.*, 750 Phil. 212, 225 (2015).

from the buy-bust operation until the presentation of the seized drugs to the court.

After a careful evaluation of the entire records of the case, We find that the evidence presented by the prosecution failed to establish an unbroken chain of custody of the seized drugs. Consequently, the integrity and identity of the seized drugs were not proven beyond reasonable doubt.

Although the general rule is that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect, jurisprudence provides for exceptions such as where the evidence of record fails to support or substantiate the findings of fact and conclusions of the lower court; or where the lower court overlooked certain facts of substance and value that, if considered, would affect the outcome of the case.²⁴ The foregoing exceptional circumstances are present in this case.

First, We examine the testimonial evidence presented by the prosecution. Among the prosecution witnesses are SPO2 Abalos (team leader of the buy-bust team) and PO3 Paulos (team member).

To recall, there are two drug specimens presented to the court. One is from the plastic sachet bought by the poseur-buyer (“bought drug”) and the other was confiscated upon frisking of Guanzon (“confiscated drug”).

In his direct examination, PO3 Paulos narrated that he was the one who conducted the bodily search on Guanzon and thus, had first possession of the confiscated drug, thus:

x x x x

Q: Upon seeing the pre-arranged signal, what happened next?

A: We rushed to their position and we introduced ourselves.

Q: After that, what happened?

A: We arrested the suspect.

Q: Do you know what happened to the *shabu* bought by the poseur buyer?

A: After introducing ourselves, we conducted bodily search on the suspect.

Q: What was the result of your bodily search?

A: I recovered a small plastic sachet with white crystalline substance and money amounting to two hundred pesos.

Q: Are you familiar with these two hundred pesos?

A: In the two hundred pesos, I noticed the initial of the poseur buyer Vandever Hernandez.

²⁴ *People v. Hilario*, G.R. No. 210610, January 11, 2018.

Q: What did you do with the items confiscated from the accused?

A: I gave them to our team leader Gerry Abalos.

Q: What did you do with the marked money and one plastic sachet you confiscated?

A: I turned it over to our team leader.

Q: Who was in possession of the items from the area of the operation up to the police station?

A: Gerry Abalos.

Q: Do you know what happened to the *shabu* bought by the poseur buyer?

A: I do not know, Sir.²⁵ (Emphasis ours)

x x x x

From the foregoing testimony, PO3 Paulos clearly had initial possession of the confiscated drug. He turned it over to SPO2 Abalos, who then had possession of the same up to the police station. As to the bought drug, PO3 Paulos had to be asked twice before he answered that he did not know what happened to the same.

In his cross examination, PO3 Paulos was also asked about the non-compliance with the requirement on inventory and photographs, *viz*:

x x x x

Q: Did you prepare any written inventory as regards the items taken from the accused?

A: Our team leader.

Q: Do you know if he submitted that inventory to this Honorable Court?

A: Only in our office.

Q: Did you take any photo of the items taken from the accused?

A: No, sir.

Q: Did you submit the specimen to the PNP Crime Laboratory Service?

A: Yes, sir.²⁶(Emphasis ours)

x x x x

Taking into account the details shared by PO3 Paulos, We now look into SPO2 Abalos's version of the events. Material portions of the latter's direct examination are reproduced as follows:

²⁵ TSN, June 7, 2007, pp. 15-16.

²⁶ TSN, October 22, 2008, pp. 11-12.

Q: After chasing him, what happened next?

A: Police officer Paulos asked him to bring out all the things in his possession.

Q: What was the thing he pulled out?

A: One plastic sachet of white crystalline substance and 2 pcs. Of Php100.00, Sir.

Q: These two (2) pcs of Php 100.00 brought out by the Accused, are they the same marked money?

A: Yes, Sir.

Q: What happened to one (1) plastic sachet that he brought out?

A: We brought it to our office, Sir.

Q: Who confiscated one plastic sachet?

A: Police officer Paulos, Sir.

Q: Can you describe the plastic sachet?

A: Small heat sealed plastic sachet, Sir.

Q: What was the content of the plastic sachet?

A: White crystalline substance, Sir.

Q: Who was in possession of the plastic sachet from the area of operation up to the police station?

A: Police officer Paulos, Sir.

Q: How many sachets were [sic] came from the Accused?

A: One was bought by Vandever Hernandez and one was confiscation [sic] by from the body of the Accused.

Q: In what instance were you able to see illegal drugs bought by Vandever Hernandez?

A: Immediately at the office, Sir.

Q: Do you know who was in possession of the plastic sachet which was bought by Vandever Hernandez from the area of operation up to the police station?

A: Police officer Hernandez.

Q: Were you able to see the specimen bought by police officer Hernandez?

A: Yes, a small heat sealed plastic sachet containing of white crystalline substance, Sir.

Q: And you said you submitted the same for examination, before presenting the specimen for examination, did you do anything with the specimen?

A: Yes. It was marked by police officer Hernandez, Sir.

Q: Where were you when police officer Hernandez marked the specimen?

A: I was beside him, Sir.

Q: What was the marking?

A: A and B.

Q: The specimen bought by Hernandez was marked as "A" and the one confiscated from the Accused was marked as "B".

A: Yes, Sir.²⁷ (Emphasis ours)

x x x x

SPO2 Abalos's testimony above totally contradicts PO3 Paulos's testimony as to who had possession of the confiscated drug from the area of arrest up to the police station. According to PO3 Paulos, he gave it to SPO2 Abalos. On the other hand, SPO2 Abalos narrated that PO3 Paulos had possession of the same during that interval of time. Clearly, there is already a gap in the chain of custody.

With regard to the bought drug, SPO2 Abalos admitted that he saw the same "immediately in the office". Thus, based on the testimonies of both SPO2 Abalos and PO3 Paulos, no one explicitly testified to seeing the bought drug from the hands of Guanzon to PO2 Hernandez. Only PO2 Hernandez can testify on the chain of custody of the said specimen.

However, nowhere in PO2 Hernandez's direct examination (the defense did not conduct cross examination) did he mention the handling of the bought drug after the arrest. His testimony pertained only to the specifics of the buy-bust operation and did not mention the custody and handling of the seized drug.

Also worth noting is the testimony of SPO2 Abalos in his cross examination, wherein he was asked about the compliance with the requirements on inventory, taking of photographs, and marking:

x x x x

Q: What was the items confiscated from the Accused?

A: One small heat sealed plastic sachet and 2 pcs of Php 100.00.

Q: With [regard] to this, did you prepare any inventory?

A: As far as I know there was, Sir.

Q: Can you submit the same before this Honorable Court?

A: Yes, Sir.

Q: Are you sure?

²⁷ TSN, June 10, 2009, pp. 13-14.

A: I am not sure.

Q: Did you give the Accused a copy of that inventory?

A: Yes, Sir.

Q: Did you let him sign it?

A: He refused to sign, Sir.

Q: Where did you prepare the inventory?

A: In our office, Sir.

Q: Did you make a photograph on the items confiscated from the Accused?

A: I cannot remember, Sir.

Q: Were you the one who brought the items to Crime Laboratory?

A: Vandever Hernandez and PO2 Marcos [sic], Sir.

Q: What was marking made on the item bought from the Accused?

A: A, Sir.

Q: And the other one?

A: B, Sir.

Q: Letter B is not the initial of the Accused?

A: I do not know, Sir.²⁸

x x x x

Nowhere in his testimony did SPO2 Abalos explain or provide reasons for non-compliance with the requirements under the law.

To be clear, We do not depart from the rule that minor discrepancies in the testimonies of the witnesses neither vitiate the essential integrity of the evidence in its material entirety, nor reflect adversely on the credibility of the witnesses. Basic is the rule that inconsistency in the testimonies that has nothing to do with the elements of the offense is not a ground to reverse a conviction.²⁹

In the case at bar, however, the inconsistencies in the testimonies do not pertain to peripheral matters as observed by the CA. Verily, the said inconsistencies shed light on the crux of the present controversy – the alleged failure to establish chain of custody and preserve the identity and integrity of the seized drugs.

Given the foregoing observations, the testimonial evidence adduced by the prosecution, on its own, clearly failed to establish the chain of custody of both drug specimens. Although the seized drugs were marked,

²⁸ Id. at 19-20.

²⁹ *People v. SPO1 Gonzales*, 781 pHIL. 149 (2016).

circumstances surrounding the marking, such as the author, the time, and the place of marking, were not clearly established. Guanzon was also not present during the said marking.

We now examine the documentary evidence before the Court.

In its Decision, the CA provided in a chart the list of documentary evidence presented by the prosecution and ruled that the same evidence likewise established the chain of custody.³⁰ For brevity, We provide a list of the said evidence instead of reproducing the entire chart, as follows:

1. Request for Laboratory Examination;
2. Initial Laboratory Report dated July 28, 2003 signed by PSI Timario;
3. Chemistry Report No. D-947-03 signed by PSI Timario;
4. Certification signed by PSI Timario; and
5. Sinumpaang Salaysay signed by PO3 Paulos and SPO2 Abalos.³¹

Contrary to the CA's findings, none of these pieces of documentary evidence prove the chain of custody of the seized drugs.

As previously discussed, there is already an unmistakable gap in the chain of custody from the place of arrest to the police station. The Sinumpaang Salaysay³² of PO3 Paulos and SPO2 Abalos also made no mention of any details regarding the identity of each individual in the chain of custody, and the manner of handling the seized drugs.

In the case of *People of the Philippines v. Gener Villar y Poja*,³³ the Court held that generally, in a buy-bust situation,

The following links must be established in the chain of custody: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4), the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.³⁴

Notably, SPO2 Abalos in his testimony, did not mention any other person present during the marking of the specimens other than himself and PO2 Hernandez, who allegedly marked the same. Nowhere in the records show where the said marking took place. In fact, PO2 Hernandez did not testify during trial, nor indicate in his affidavit, that he is the one who

³⁰ *Rollo*, p. 13.

³¹ *Id.* at 13-15.

³² Records (Crim. Case No. 03-26225 and 03-28226), pp. 10-11.

³³ 799 Phil. 378 (2016).

³⁴ *Id.* at 389.



marked the seized drugs. On the other hand, PSI Timario testified during her direct and cross examination, that the specimens were marked by the “arresting officers” as they were already pre-marked when submitted to her.³⁵

The importance of the marking of seized drugs, as the first link in the chain of custody, is elucidated in the case of *People of the Philippines v. Alberto Gonzales y Santos*,³⁶ thus:

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, **should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**³⁷ (Emphasis ours)

In recent jurisprudence, marking upon immediate confiscation has been interpreted to include marking at the nearest police station, or the office of the apprehending team.³⁸ Nonetheless, in this case, even the place of marking was not clearly established by the prosecution.

As previously noted, SPO2 Abalos merely testified that he was beside PO2 Hernandez during the marking and before submitting the marked specimens for examination. Taking this into consideration, as well as the absence of the accused during the marking, and the lack of a categorical statement by PO2 Hernandez that he is the author of the marking, We find that the first link in the chain of custody is broken.

With regard to the second link, the contradicting testimonies of PO3 Paulos and SPO2 Abalos on the identity of the officer who had custody of the seized drugs from the place of arrest to the police station already cast serious doubts on whether the drugs brought to the police station is the same drugs seized from Guanzon at the place of arrest.

³⁵ TSN, May 26, 2006, pp. 7-9.

³⁶ 708 Phil. 121 (2013).

³⁷ Id. at 130-131.

³⁸ *People v. Rafols*, 787 Phil. 466, 476 (2016).

Moreover, in *People of the Philippines v. Pablo Arposeple y Sanchez*,³⁹ this Court found that the inherent weakness of the first link in the chain of custody caused the subsequent links to fail. Thus, it held:

The first link in the chain of custody was undoubtedly inherently weak which caused the other links to miserably fail. The first link, it is emphasized, primarily deals on the preservation of the identity and integrity of the confiscated items, the burden of which lies with the prosecution. The marking has a twin purpose, viz: **first**, to give the succeeding handlers of the specimen a reference, and **second**, to separate the marked evidence from the *corpus* of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence. **Absent therefore the certainty that the items that were marked, subjected to laboratory examination, and presented as evidence in court were exactly those that were allegedly seized from Arposeple, there would be no need to proceed to evaluate the succeeding links or to determine the existence of the other elements of the charges against the appellants. Clearly, the cases for the prosecution had been irreversibly lost as a result of the weak first link irretrievably breaking away from the main chain.** (Emphasis Ours)

Since the prosecution miserably failed to establish the first two links in this case, there is no more need to discuss the subsequent links. The totality of the evidence presented failed to prove the circumstances surrounding the marking of the seized drugs and the identity of the individual handling the same from the place of arrest, up to the police station.

The broken links in the chain of custody, taken together with the absence or non-submission of inventory and photographs to the court, show an utter lack of effort on the part of the police officers to comply with the mandatory procedures under the law. We cannot turn a blind eye on such blatant violations of Section 21 of R.A. No. 9165, a substantive law. Section 21 of the same, as amended by R.A. No. 10640, serves as a procedural safeguard against abuse of police authorities in the conduct of their office through frame-up, and other similar operations related to drug cases.

Given the gravity of the penalty imposed in drug cases, it is incumbent upon this Court to give teeth to the law, specifically Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, which essentially protects the right of the innocent to be presumed as such. This does not mean that we tolerate or encourage criminality. The primordial duty of the Court is to ensure that safeguards provided by the Constitution and the law, are properly in place and working.

³⁹ G.R. No. 205787, November 22, 2017.

In sum, to be excused from non-compliance with Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, the prosecution must establish each link in the chain of custody, and provide justifiable grounds for any gap in the chain. Non-compliance with the said provision and its IRR triggers the duty of the prosecution to present evidence that would establish every link in the chain of custody to ensure that the identity and integrity of the seized drug is duly preserved. Thus, the identity of the individual handling the seized drug and the manner of handling, like the elements of the offense, must be proven beyond reasonable doubt. Failure to prove the same beyond reasonable doubt, constrains this Court to rule for an acquittal.


WHEREFORE, the Decision dated May 31, 2017 of the Court of Appeals in CA-G.R. CR-HC-08152 is **REVERSED** and **SET ASIDE**. Accused-appellant Ricardo C. Guanzon is **ACQUITTED** of both charges of illegal sale and possession of dangerous drugs, under Sections 5 and 11, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED** immediately **RELEASED** from detention unless he is confined for another lawful cause.

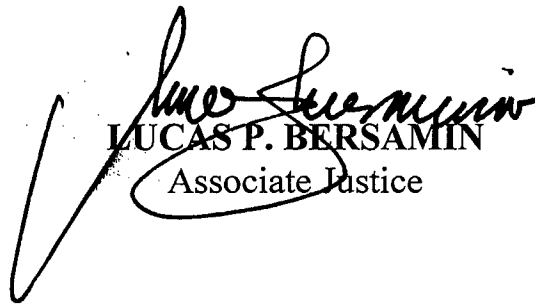
Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation and to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice

(on official leave)
MARIANO C. DEL CASTILLO
Associate Justice



FRANCIS H. JARDELEZA
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.



TERESITA J. LEONARDO-DE CASTRO
Chief Justice