Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PAQUITO TOH BUSTILLO @KITS, Petitioner,	**G.R. No. 216933**
	Present:
-versus-	LEONEN, *J., Chairperson,* HERNANDO, INTING, ZALAMEDA*, and LOPEZ, J., *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** March 15, 2021 MisDcBatt

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DECISION

LEONEN, *J.*:

This resolves a Petition for Review assailing the Decision[1] and Resolution[2] of the Court of Appeals, which affirmed the conviction of accused-appellant Paquito Toh Bustillo (Bustillo) @ "Kits" for violating Presidential Decree No. 1602,[3] as amended, otherwise known as the Anti-Gambling Law.

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* Designated additional Member per Raffle dated February 17, 2021.

1 *Rollo*, pp. 4–16. The December 21, 2012 Decision in CA-G.R. CEB-CR No. 01347 was penned by Associate Justice Edgardo L. Delos Santos (now a member of this Court) and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap of the Nineteenth Division, Court of Appeals, Cebu City.

2 Id. at 70–71. The May 13, 2014 Resolution in CA-G.R. CEB-CR No. 01347 was penned by Associate Justice Edgardo L. Delos Santos (now a member of this Court) and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap of the Former Nineteenth Division, Court of Appeals, Cebu City.

3 As amended by amended by Republic Act No. 9287 (2003).

In 2008, Bustillo was charged for violation of Presidential Decree No. 1602, as amended by Republic Act No. 9287, for acting as a *masiao* agent or collector. The accusatory portion of the Information reads:

> The undersigned Prosecutor I of Cebu City accuses **PACQUITO TOH BUSTILLO @ KITS** for **VIOL. OF P.D. 1602 AS AMENDED BY RA 9287**, committed as follows:
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> That on or about the **6th DAY OF FEBRUARY** 2008 at about **11:00 o'clock in the evening**, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused being then unlawfully in possession of **FOURTEEN (14) PIECES OF SHEETS OF PAPERS WITH 3 NUMBER COMBINATIONS; TWO (2) SHEETS OF PAPERS; 719.20 PIECE SIGNED kits AND CASH MONEY IN THE AMOUNT OF ₱416.25,** with deliberate intent, did then and there engage in an illegal gambling activity known as "Jai-Alai Masiao" that uses numbers or combinations as factors in giving jackpots, by issuing such numbers or combinations to a customer/bettor for a consideration the result of which depended upon the alleged game of Jai-Alai.[4] (Emphasis in the original)

Bustillo then posted a ₱2,000.00 bond to secure his provisional release.[5] Upon arraignment, Bustillo pleaded not guilty.[6] Trial on the merits ensued.[7]

The prosecution presented the following witnesses: (1) Senior Police Officer II Rene Cerna (SPO2 Cerna); (2) Police Officer I Ramil Tanggol (PO1 Tanggol); and (3) Police Officer II Wetzel Berry (PO2 Berry).[8]

According to SPO2 Cerna, around 11:00 p.m. of February 6, 2008, he, PO1 Tanggol, and PO2 Berry were positioned at Pier 3 along V. Sotto and Arellano Blvd., Cebu City to arrest a violator of the new anti-gambling law.[9] The operation was allegedly based on an anonymous tip that a person will be issuing number combinations in the area.[10] The informant said that the suspect wears a pair of short denim pants and a white shirt.[11]

About a meter away, they saw Bustillo who was surrounded by several persons, writing on a piece of paper.[12] SPO2 Cerna identified the game as *masiao*, a three-number combination game of chance.[13]

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4 *Rollo*, p. 96 and 104.
5 RTC records, p. 8–10.
6 *Rollo*, p. 96.
7 Id. at 96; RTC records, p. 1.
8 *Rollo*, p. 96.
9 Id.
10 Id.
11 Id. at 97.
12 Id. at 97; RTC records, p. 91, TSN dated September 4, 2008.
13 RTC records, p. 93.

SPO2 Cerna then arrested Bustillo, informed him of the crime he committed, and apprised him of his constitutional rights.[14] PO2 Berry retrieved from Bustillo the following *masiao* paraphernalia: (1) 14 pieces of cut elongated papers with number combination; (2) two pieces of paper marked "369–20"; and (3) cash in the amount of ₱146.00.[15] These were allegedly turned over to PO1 Tanggol as the designated evidence custodian of the team.[16] Bustillo was then brought to the police station[17] where the confiscated paraphernalia were marked.[18]

SPO2 Cerna admitted that they were in civilian attire during the arrest and that they were not able to arrest the bettors because they already scampered away upon Bustillo's arrest.[19]

On the other hand, PO1 Tanggol narrated that they merely chanced upon Bustillo while conducting a preventive patrol in the area. From a distance of about 15 meters, they saw Bustillo issuing a piece of paper.[20] This is when they approached Bustillo, introduced themselves as police officers, and arrested him.[21] After apprising Bustillo of his constitutional rights,[22] PO2 Berry then frisked him and retrieved the *masiao* paraphernalia.[23] They brought Bustillo to the police station where PO2 Berry marked the items.[24] PO1 Tanggol admitted that Bustillo was locked up in the detention cell when the paraphernalia was marked.[25]

In his testimony, PO2 Berry likewise denied that they received an anonymous tip concerning a *masiao* agent and that, instead, they were around the area for a preventive patrol.[26] While monitoring the area, they saw Bustillo issuing *masiao* tickets and arrested him. SPO2 Cerna then apprised him of his constitutional rights,[27] and confiscated the paraphernalia which were later labeled in the police station in the presence of Bustillo.[28]

The defense presented Bustillo and Kevin James Albiso (Albiso) as witnesses.[29]

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[14] *Rollo,* p. 97; RTC records, p. 92.
[15] *Rollo,* p. 97.
[16] RTC records, p. 104, TSN dated October 16, 2008.
[17] *Rollo,* p. 97.
[18] RTC records, p. 104.
[19] Id. at 100–101.
[20] Id. at 109 and 114, TSN dated October 30, 2008.
[21] *Rollo,* p. 97; RTC records, p. 110.
[22] Id.
[23] Rollo, p. 97; RTC records, p. 115.
[24] *RTC rollo,* p. 115.
[25] Id. at 115.
[26] Id. at 122, TSN dated November 13, 2008.
[27] Id. at 122–123 and 125.
[28] Id. at 123.
[29] *Rollo,* p. 98.

Bustillo denied the police officers' allegations. He claimed that he was in the area that night to sell herbal liniment. While waiting for a buyer, police in civilian attire suddenly approached and frisked him.[30] They confiscated from him ₱146.00 which were proceeds from selling herbal liniment.[31] Contrary to the prosecution's claim, he was not apprised of his constitutional rights and was not informed of the crime he committed. He was then brought to the police station where he was made to undress but nothing was retrieved from him. He was then locked up inside the detention cell.[32]

Bustillo disowned the *masiao* paraphernalia. He further alleged that he did not affix his signature on the evidence except on one sheet of paper where he was ordered to sign.[33]

Meanwhile, Albiso testified that he was in the vicinity to buy a bottle of liniment as instructed by his grandmother. When he was about five to six meters away, he saw Bustillo being arrested. He claimed to not have seen anything recovered from Bustillo except for some money.[34]

The defense later manifested that Bustillo could not have been engaged in *masiao* because *masiao* agents remit sales proceeds before 11:00 o'clock in the evening.[35]

The Regional Trial Court found Bustillo guilty.[36] The dispositive portion of its Decision reads:

> Accordingly, this court finds the accused guilty as charged and hereby sentences him to suffer the penalty of imprisonment of from six (6) years and one (1) day to eight (8) years.
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> . . . .
>
> SO ORDERED.[37]

The trial court held that the prosecution satisfactorily proved the guilt of Bustillo.[38] It was convinced that the evidence of the defense showing the sheets of paper marked "719-20 KITS" and "396-20 KITS" and the paper stub

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30 Id. at 98.
31 Id. at 98–99; RTC records, p. 131, TSN dated December 4, 2008.
32 *Rollo*, p. 98.
33 Id. at 99.
34 Id.
35 Id. at 100.
36 Id. at 96–100. The March 23, 2009 Decision was penned by Presiding Judge Gabriel T. Ingles of the Regional Trial Court, Seventh Judicial Region, Branch 58, Cebu City.
37 Id. at 100.
38 Id.

with number combinations prove that Bustillo, whose alias is "Kits," was engaged in an illegal numbers game.[39]

It did not give weight to the defense's mere denial of the prosecution's allegations and evidence. It also did not lend credence to the defense's claim that the police planted the evidence absent any ill-motive against Bustillo. Between the mere denial of the defense and the evidence of the prosecution, the latter was given more weight.[40]

Upon appeal, Bustillo argued that the prosecution failed to prove his guilt beyond reasonable doubt.[41] He raised doubts as to the veracity and credibility of the police officers' testimonies, emphasizing the inconsistencies in their narration.[42] In particular, he questioned their claim that the evidence were not marked on-site, which casts doubt on the existence of the crime.[43] Further, Bustillo claimed that his constitutional right to be informed of the nature and cause of the accusation against him was violated because the Information only provided a general designation of the offense without specifying the particular acts punished under Republic Act No. 9287.[44]

The Court of Appeals affirmed Bustillo's conviction but modified the penalty imposed,[45] thus:

> **WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby **DENIED**. The assailed Decision dated 23 March 2009 promulgated by the Regional Trial Court, Branch 58 in Cebu City in Criminal Case No. CBU-82281 is **AFFIRMED WITH MODIFICATION** that the indeterminate penalty is imprisonment of eight (8) years and one (1) day to nine (9) years as maximum.
>
> **SO ORDERED.**[46] (Emphasis in the original)

The appellate court ruled that there was no violation of Bustillo's constitutional right as the Information clearly described the charge in a manner that sufficiently apprised Bustillo of the offense charged against him and enabled him to adequately prepare his defense. A reading of the Information shows that Bustillo was prosecuted for being a collector or agent for the illegal numbers game known as *jai-alai masiao*, by issuing numbers or combinations to a bettor. This is further supported by the allegation in the Information that he was found in possession of several *masiao* paraphernalia.[47]

[39] Id. at 99–100.
[40] Id. at 100.
[41] Id. at 9.
[42] Id.
[43] Id.
[44] Id. at 7.
[45] Id. at 4–16.
[46] Id. at 16.
[47] Id. at 8–9.

Moreover, it pointed out that Bustillo cannot assail the validity of the Information for the first time on appeal. Failing to raise this issue before the trial court either through a motion for bill of particulars or a motion to quash information, he is deemed to have waived his objection to any formal defect in the Information.[48]

The Court of Appeals further ruled that the prosecution proved Bustillo's guilt beyond reasonable doubt.[49] The arresting officers all testified that they saw Bustillo issue number combinations to *masiao* bettors.[50] Their testimonies were straightforward and their identification of Bustillo as the perpetrator was unequivocal.[51] The inconsistencies in their testimonies only concerned minor details which are insufficient to overturn the conviction.[52]

Moreover, it ruled that the confiscation of *masiao* paraphernalia from Bustillo is enough to support his conviction. Under Section 4 of Republic Act No. 9287, possession of any gambling paraphernalia is deemed *prima facie* evidence of any offense under the law. Since Bustillo was found in possession of several *masiao* paraphernalia, his conviction must be upheld absent any compelling contrary evidence.[53]

The Court of Appeals disregarded Bustillo's defense of denial and frame-up[54] for being inherently weak and held that they cannot prevail over the positive declaration of witnesses. Further, there was no indication that the prosecution witnesses were impelled by improper motive to fabricate a charge against Bustillo.[55] Thus, the police officers' testimonies were entitled to full credence and their actions were presumed to have been done in regular performance of duty.[56]

Bustillo moved for the reconsideration of the decision, but it was denied.[57] Hence, Bustillo filed a Petition for Review before this Court, assailing the Decision and Resolution of the Court of Appeals.[58]

Petitioner reiterates that his constitutional right to be informed of the nature and cause of the accusation against him was violated because of the lack of specificity of the Information.[59] He alleges that due to this defect,

[48] Id. at 9.
[49] Id. at 10–13.
[50] Id. at 10.
[51] Id. at 13.
[52] Id. at 14.
[53] Id. at 14.
[54] Id.
[55] Id. at 15.
[56] Id.
[57] Id. at 70–71.
[58] Id. at 35–50.
[59] Id. at 42.

there was a variation as to the charge under which he was convicted. The trial court found him guilty of violating Section 2 of Republic Act No. 9287, while the appellate court convicted him under Section 3(c).[60]

He further avers that there are at least seven different acts defined and punished under Section 3 of Republic Act No. 9387[61] and there was no sufficient and adequate allegation in the Information which of these he violated.[62] Thus, the judgment against him is void.[63]

Petitioner further questions the credibility of the testimonies of the prosecution's witnesses.[64] He stresses that the testimonies were inconsistent on several material points.[65]

Specifically, the police officers gave contradicting testimonies as to why they were in the area. SPO2 Cerna claimed that they received an anonymous tip concerning a *masiao* agent, while PO1 Tanggol and PO2 Berry alleged that they merely chanced upon petitioner while conducting a preventive patrol.[66] As to their observation prior to the arrest, SPO2 Cerna narrated that he saw Bustillo writing on a piece of paper while surrounded by several persons, but PO1 Tanggol and PO2 Berry claimed that there was only one bettor with Bustillo.[67] Further, it was not clear who confiscated and brought the paraphernalia to the police station. SPO2 Cerna and PO2 Berry claimed that SPO2 Cerna was the officer who confiscated the items and turned them over to PO1 Tanggol as the custodian of the team, but PO1 Tanggol testified that it was PO2 Berry who confiscated the items.[68]

Moreover, the officers cannot agree on who actually marked the evidence. SPO2 Cerna said he personally did. Meanwhile, PO1 Tanggol claimed that it was PO2 Berry, but PO2 Berry testified that he never held the evidence.[69] Petitioner further raises doubt as to the credibility of the evidence as they were not marked on-site and he was not present when they were marked.[70] He also claims that only the money was recovered from him.[71]

Petitioner avers that the officers merely presumed that he was a *masiao* agent. He points out that the officers admitted that they could hardly see the surroundings as well as face of the bettor because it was already 11:00 p.m.[72]

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[60] Id. at 43.
[61] Id.
[62] Id. at 44.
[63] Id.
[64] Id. at 45.
[65] Id.
[66] Id. at 46.
[67] Id.
[68] Id. at 47-48.
[69] Id. at 48.
[70] Id. at 49.
[71] Id.
[72] Id.

Lastly, petitioner manifests that he cannot be a *masiao* agent because agents remit their proceeds before 11:00 p.m.[73]

In its Comment,[74] respondent, through the Office of the Solicitor General, asserts that the petitioner's arguments in this petition are mere rehash of the issues he raised in his appeal.[75] Moreover, these issues are factual in nature and are beyond the scope of a Rule 45 petition.[76]

Respondent further argues that the Information was complete with recital of facts which sufficiently apprised petitioner of his violation and enabled him to prepare his defense.[77] Citing the Court of Appeals' ruling, it avers that the Information described the offense in a manner sufficient to apprise petitioner of the offense charged against him[78] which is engaging in *jai-alai masiao* by issuing numbers or combinations to a bettor.[79] This falls under Section 2(g) of Republic Act No. 9287, which penalizes those acting as collector or agent of illegal numbers games.[80]

Moreover, respondent posits that the prosecution proved petitioner's guilt beyond reasonable doubt. The testimonies of the three police officers categorically established the elements of the offense charged.[81] SPO2 Cerna, PO1 Tanggol, and PO2 Berry unanimously identified petitioner as the person issuing *masiao* tickets to bettors.[82] They narrated how they saw petitioner issue paper sheets containing number combinations to bettors. They also identified the paraphernalia confiscated from him and detailed the events which led to petitioner's arrest.[83]

Respondent further avers that the appreciation of evidence, factual findings, and conclusions of the trial and appellate courts must be given credibility, absent clear showing that there was misappreciation of material facts.[84] Petitioner's contentions on minor and inconsequential points are insufficient to overturn a conviction.[85]

The issues for this Court's resolution are the following:

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[73] Id. at 50.
[74] Id. at 170–194.
[75] Id. at 178.
[76] Id.
[77] Id. at 184.
[78] Id. at 183.
[79] Id.
[80] Id. at 181.
[81] Id. at 185.
[82] Id.
[83] Id. at 189.
[84] Id. at 190.
[85] Id. at 191.

First, whether or not there is a violation of the accused's right to be informed of the nature and cause of the accusation against him; and

Second, whether or not the accused is guilty beyond reasonable doubt of violating Republic Act No. 9287.

We grant this Petition.

I

Article III, Section 14(2) of the Constitution provides that the accused has the right to be informed of the nature and cause of the accusation against them.[86] Rule 110, Sections 8 and 9 of the Rules of Court manifest this Constitutional right:

> SECTION 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
>
> SECTION. 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.[87]

The right to be informed of the nature and cause of the accusation against an accused has the following objectives: (1) to furnish the accused with a description of the charge against him which will enable him to make a defense; (2) to avail himself of conviction or acquittal for protection against further prosecution for the same cause; and (3) to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if warranted.[88]

An accused cannot be convicted of an offense unless it is clearly charged in the Information. The allegations of facts which constitute the charge are substantial matters and the accused's right to question his conviction based on facts not alleged in the Information cannot be waived.[89]

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[86] CONST., art. III, sec. 14(2).
[87] RULES OF COURT, Rule 110, secs. 8 and 9.
[88] *Pecho v. People*, 331 Phil. 1 (1996) [Per J. Davide, Jr., En Banc].
[89] *Quimvel y Braga v. People*, 808 Phil. 889 (2017) [Per J. Velasco, Jr., En Banc].

Conviction based on a ground not alleged is unfair and underhanded because the accused was tried on a ground for which they have not prepared for.[90] Thus, even if a crime is duly proven, an accused will not be convicted if the crime is not alleged or necessarily included in the Information filed against them.[91]

Thus, an Information must clearly and sufficiently describe the charge and the elements and facts constituting the crime because it is presumed that the accused has no independent knowledge of the facts that constitute the offense.[92]

However, an Information does not have to employ the exact language of the statute in stating the charge.[93] What is required under the law is that the act or omission constituting the offense be stated in an ordinary and concise language sufficient to enable a person of common understanding to know the offense charged.[94] In *People v. Lab-eo*:[95]

> The test of sufficiency of Information is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly. The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial. Significantly, the appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him because of the style or form adopted in the Information[.][96]

The criminal charge is determined from the recital of facts, and not from the caption, preamble, or formal specification of the violated law in the Information or complaint, these being mere conclusions of law. In *People v. Dimaano*:[97]

> What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.

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90 *Andaya v. People*, 526 Phil. 480 (2006) [Per J. Ynares-Santiago, First Division].
91 *People v. Manalili y Bolisay*, 355 Phil. 652 (1998) [Per J. Panganiban, First Division].
92 *People v. Bayya*, 384 Phil 519 (2000) [Per J. Purisima, En Banc]; *Buhat v. Court of Appeals*, 333 Phil. 562 (1996) [Per J. Hermosisima Jr., First Division].
93 *People v. Cadampog*, 472 Phil. 358 (2004) [Per J. Callejo, Sr., Second Division].
94 Id.
95 424 Phil. 482 (2002) [Per J. Carpio, Third Division].
96 Id. at 484.
97 506 Phil. 630 (2005) [Per Curiam, En Banc].

> No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense[.][98]

Hence, prosecutors are not required to designate the offense by its formal name in the law. The Information is deemed sufficient as long as the controlling words in the body of the Information adequately determine the crime charged.[99]

This is consistent with common sense and with the requirements of plain justice.[100] Even without the formal designation of the offense, as long as the Information clearly and sufficiently apprises the accused of the crime for which they will be tried, the accused is properly accorded due process, and the objectives of the constitutional right are met.

Here, there is no violation of petitioner's right to be informed of the nature and cause of the accusation against him.

A careful reading of the Information shows that the accused was properly apprised of the criminal act he allegedly committed:

> The undersigned Prosecutor I of Cebu City accuses PACQUITO TOH BUSTILLO @ KITS for VIOL. OF P.D. 1602 AS AMENDED BY RA 9287, committed as follows:
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> That on or about the 6th DAY OF FEBRUARY 2008 at about 11:00 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then unlawfully in possession of FOURTEEN (14) PIECES OF SHEETS OF PAPERS WITH 3 NUMBER COMBINATIONS; TWO (2) SHEETS OF PAPERS; 719.20 PIECE SIGNED [KITS] AND CASH MONEY IN THE AMOUNT OF [P]416.25, with deliberate intent, did then and there ***engage in an illegal gambling activity known as "Jai-Alai Masiao"*** that uses numbers or combinations as factors in giving jackpots, ***by issuing such numbers or combinations to a customer/bettor for a consideration the result of which depended upon the alleged game of Jai Alai.***
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> CONTRARY TO LAW.[101] (Emphasis supplied)

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[98] Id. at 632.

[99] *Gamaro v. People*, 806 Phil. 483 (2017) [Per J. Peralta, Second Division].

[100] Id.

[101] *Rollo*, p. 104.

A person of common understanding can deduce that the alleged act of issuing *masiao* tickets to a customer or bettor for a consideration falls within the scope of a "collector or agent" under Section 2(g), in relation to Section 3(c), of Republic Act No. 9287. The relevant sections read:

> SECTION 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:
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> . . . .
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> (g) *Collector or Agent ("Cabo", "Cobrador", "Coriador" or variants thereof).* - Any person who collects, solicits or produces bets in behalf of his/her principal for any illegal numbers game who is usually in possession of gambling paraphernalia.
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> SECTION 3. *Punishable Acts.* — Any person who participates in any illegal numbers game shall suffer the following penalties:
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> . . . .
>
> c) The penalty of imprisonment from eight (8) years and one (1) day to ten (10) years, if such person acts as a collector or agent[.]

The Information sufficiently charges petitioner of violating Republic Act No. 9287 for acting as a collector or agent of an illegal numbers game. While it does not use the formal designation of the provision violated, the Information contains no ambiguity. It clearly indicates that petitioner was charged for acting as a *jai-alai masiao* collector or agent by issuing numbers or combinations tickets to a bettor.

These factual allegations sufficiently inform petitioner of the acts which constitute his offense and satisfactorily allege the elements of violating Republic Act No. 9287 by acting as a collector or agent. Thus, petitioner is fully apprised of the charge and was not deprived of his constitutional right to be informed of the nature and cause of the accusation against him.

Moreover, there is no variance in petitioner's conviction under the trial and appellate courts. Petitioner claims that the vagueness of the Information led to his conviction under different sections of the law. He stresses that the trial court convicted him under Section 2 of Republic Act No. 9287 while the Court of Appeals convicted him under Section 3(c). However, the specific sections cited by the trial court and the Court of Appeals refer to the same charge. These sections pertain to the definition of collector or agent and its corresponding penalty.

II

As a rule, only questions of law may be raised in a Petition for Review on Certiorari.[102] This Court is not a trier of facts and factual findings of the lower courts are deemed "final, binding, or conclusive on the parties and upon this Court."[103] Moreover, in criminal cases, this Court generally does not disturb the factual findings and appreciation of evidence by the lower courts, as well as its finding on the credibility of witnesses, these being tasks most properly lodged within the domains of trial courts.[104] In *People v. Gerola*:[105]

> [T]he findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an ever more stringent application where the said findings are sustained by the CA, as in the case at hand[.]"[106]

Nevertheless, the rule admits several exceptions. Thus:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
> (2) When the inference made is manifestly mistaken, absurd or impossible;
> (3) Where there is a grave abuse of discretion;
> (4) When the judgment is based on a misapprehension of facts;
> (5) When the findings of fact are conflicting;
> (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
> (7) The findings of the Court of Appeals are contrary to those of the trial court;
> (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
> (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and
> (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[107]

The lower court's appreciation of evidence and factual conclusions cannot run counter to the constitutional right to presumption of innocence and evidentiary demand that guilt be established beyond reasonable doubt. In *Macayan, Jr. y Malana v. People*:[108]

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[102] RULES OF COURT, Rule 45, sec. 1.
[103] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].
[104] *People v. Gerola y Amar*, 813 Phil. 1055 (2017) [Per J. Caguioa, First Division].
[105] Id.
[106] Id. at 1063–1064.
[107] *Medina v. Asistio, Jr.*, 269 Phil. 225, 226–227 (1990) [Per J. Bidin, Third Division].
[108] 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be presumed innocent until the contrary is proved. Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution. Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in Basilio v. People of the Philippines:
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>> We ruled in People v. Ganguso:
>>
>>> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
>>>
>>> Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[109]

Although the credibility of witnesses is best left to the judgment of the trial court, its findings may be disregarded if the trial court has "ignored or overlooked certain facts or circumstances of weight and significance, which if taken into consideration would alter the outcome of the case."[110]

Here, petitioner claims a misapprehension of facts, leading to his wrongful conviction. He contends that the lower courts overlooked several material inconsistencies in the testimonies of the prosecution.

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109 Id. at 213–214.

110 *People v. Pajares,* 310 Phil. 361, 361 (1995) [Per J. Melo, Third Division]; *Clemente y Martinez v. People*, 667 Phil. 515 (2011) [Per J. Villarama, Jr., Third Division].

A review of the records reveals that there are improbabilities in the testimonies of the prosecution, upon which the conviction is based. There is reasonable doubt that the accused committed the crime he was charged with.

First, the prosecution witnesses' testimonies differed as to their operations in the area. SPO2 Cerna claimed that he received an anonymous tip but his companions were unaware of this operation, narrating that they were merely conducting a preventive patrol. In SPO2 Cerna's testimony:

> Q: Why were you there?
> A: We were there to arrest a person for violation of the new gambling law.
> Q: How did you know that person?
> A: We received a report through telephone call from anonymous person that there was a person of issuing number combinations in the vicinity of Pier 3.
> Q: How did you know this person?
> A: He was described by the caller that the person was wearing a short pants denims and white shirt.[111]

However, SPO2 Cerna later admitted that while the anonymous tip should be recorded as an alarm report, there was no recorded report in their police blotter.[112]

On the other hand, PO1 Tanggol and PO2 Berry claimed that they only chanced upon petitioner while roving around the area.[113] In PO1 Tanggol's testimony:

> Q: You said that there were three of you of that team which conducted the preventive patrol?
> A: Yes sir.
> Q: Before the actual arrest of the accused, from where did you and your team came from?
> A: At the police station.
> Q: You conducted the preventive patrol because there was somebody who called you up?
> A: No sir.
> Q: There was no telephone call?
> A: Yes sir.
> Q: Meaning the directive was to conduct a preventive patrol?
> A: Yes sir.
> Q: And indeed you will confirm that there was no telephone call or a report from a person?
> A: Yes sir.[114]

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[111] RTC records, p. 89, TSN dated September 4, 2008.
[112] Id. at 102, TSN dated October 16, 2008.
[113] Id. at 109, TSN dated October 30, 2008; and 119, TSN dated November 13, 2008.
[114] Id. at 113, TSN dated October 30, 2008.

SPO2 Cerna also mentioned that he saw petitioner surrounded by many persons while writing on a piece of paper. However, they failed to arrest even one of these individuals:[115]

> Q: By the way, is it not that the person who issued a number combination was violating a law. Is that your understanding of RA 9287?
> A: Yes.
> Q: How about the person [to] whom that number combination was issued. Was he also violating a law?
> A: Yes.
> Q: You said that the accused at the time of the arrest was surrounded by so many persons. Were you able to arrest other persons aside from the accused?
> A: When we arrested the accused, the people who surrounded the accused already scampered away.
> Q: By the way, how many of you [ ] arrested the accused in this case?
> A: There were only 3 of us.
> Q: Despite your number and your capability being policemen, it is only the accused you were able to arrest?
> A: Yes, because as we were approaching, the people noticed our presence. They immediately moved away in different direction.
> Q: During the arrest, were your team wearing a police uniform?
> A: No.
> Q: Despite the fact that your identit[ies] were concealed because you said your team was not wearing a uniform, you still maintain that when you approached this group surrounding the accused, they immediately scampered away?
> A: Yes. I think those people are residents in the area and recognize our face. Our station is just a few meters from the area.[116]

Further, it remains uncertain how and who handled and marked the evidence. When the evidence was presented before the trial court, the prosecution witnesses could not identify the paraphernalia allegedly confiscated from the petitioner.

During SPO2 Cerna's testimony, he claimed that he confiscated the *masiao* paraphernalia from the petitioner and turned them over to Tanggol, who was their evidence custodian.[117] He alleged that the paraphernalia was marked "PKB-02-06-08" but when it was presented to him during his testimony, he could not identify the evidence.[118]

> Q: Mr. Witness, last time you made mention that you recovered from the accused some masiao paraphernalia and money. And you promised to bring them when you testified. Do you have with you now the evidences?
> A: Yes, sir.

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[115] Id. at 100, TSN dated October 16, 2008.
[116] Id. at 100–101.
[117] Id. at 104.
[118] Id.

FISCAL ACOSTA:
The witness has turned over to this representation a plastic with marking PTB-02-06-08 which contains cut papers with elongated paper, money worth P146.25 with coins and bills. May we pray that this be marked as Exh. "B", collectively.[119]

...

Q: Is it not during your direct examination you said that the paraphernalia was with PO1 Ramil Tanggol?
A: Yes. After the arrest I turned over the paraphernalia to him because he was designated as evidence custodian in our team.

Q: After the arrest, what particular marking that you made to the evidence to describe that the said evidence was confiscated from the accused?
A: PKB-02-06-08.

Q: That is the very same evidence which was marked before this Honorable Court as Exh. B for the prosecution?
A: I have no idea.

Q: You said that you marked those evidences to identify that the same was confiscated from the accused. Where did you mark the said evidences?
A: It was at the police station.

Q: You did not mark it at the time you arrested the accused?
A: No.[120]

Meanwhile, PO1 Tanggol claimed that it was PO2 Berry who recovered the paraphernalia, who then marked the items in his presence. However, PO1 Tanggol likewise failed to identify the evidence when it was presented to him because he allegedly forgot the markings:

Q: Considering that you were three at that time who among you...recovered the [paraphernalia]?
A: PO2 Berry.

Q: Were you there?
A: Yes sir.

Q: Can you still identify the said evidences if shown to you again?
A: Yes sir.

Q: How?
A: Through the markings.

Q: Who placed the markings?
A: PO2 Berry.

Q: Where were you when Berry made the markings?
A: At the police station.

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[119] Id. at 96–97.
[120] Id. at 104.

Q: Where were you at that time?
A: Besides him.

Q: What was the marking?
A: I forgot the marking?

Q: How could you identify then when you said you forgot the marking?
A: I cannot identify.[121]

The questionable circumstances surrounding the arrest and, more important, the seizure, marking, and identification of the evidence before the trial court, show the prosecution's failure to establish petitioner's guilt beyond reasonable doubt.

As ruled in *Villamor v. People*,[122] illegal gambling paraphernalia is the very *corpus delicti* of the crime charged and the concomitant failure to establish this element raises doubts as to its origins. The inconsistency and absurdity of the arresting officers' conduct from the handling and marking of the evidence, until its identification before the trial court, cast doubt on the veracity of their claims. This shows the prosecution's failure to establish the commission of crime.

Even considering the other pieces of evidence, We find it questionable that a *masiao* agent will only have a meager collection of ₱146.00. If petitioner was indeed a *masiao* agent, it should have been considerably higher.

All told, reasonable doubt persists in the finding of guilt against petitioner. Contrary to the conclusions of the trial and appellate courts, the inconsistencies in the prosecution witnesses' testimonies are not immaterial as they put into question the commission of the crime. Without demonstration and proof that petitioner possessed the *masiao* paraphernalia, we find no strong basis for his conviction.

Proof beyond reasonable doubt must be established in criminal cases to secure a conviction. The prosecution bears the burden to establish this quantum of evidence and, in doing so, it must rely on the strength of its own evidence and not on the weakness of accused's defense. Failure to dispense with this evidentiary requirement constrains this Court to acquit the accused.[123]

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED.** The Decision and Resolution of the Court of Appeals in CA-G.R. CEB-CR No. 01347 is **REVERSED** and **SET ASIDE.** Petitioner

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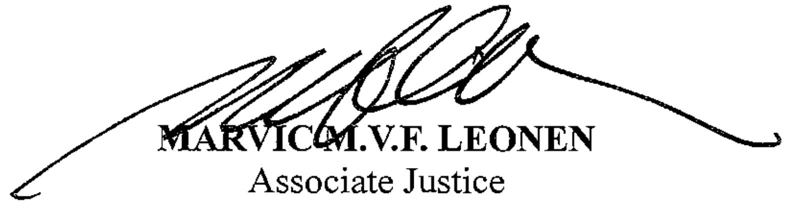
[121] Id. at 111–112, TSN dated October 30, 2008.
[122] 807 Phil. 894 (2017) [Per J. Del Castillo, First Division].
[123] *Macayan, Jr. y Malana v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

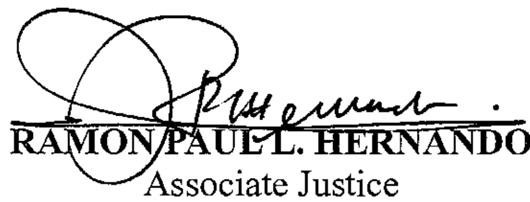
Paquito Toh Bustillo @ "KITS" is hereby **ACQUITTED.** Petitioner's bail bond is ordered **CANCELLED**.

SO ORDERED.

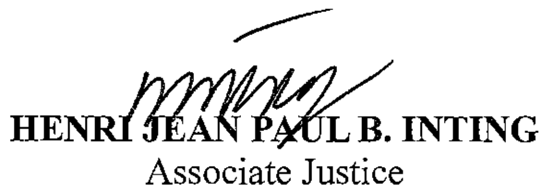


MARVIC M.V.F. LEONEN
Associate Justice

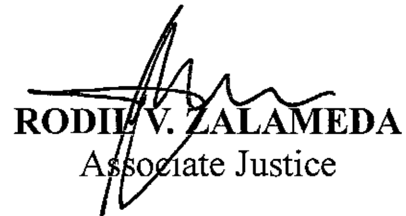
WE CONCUR:



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

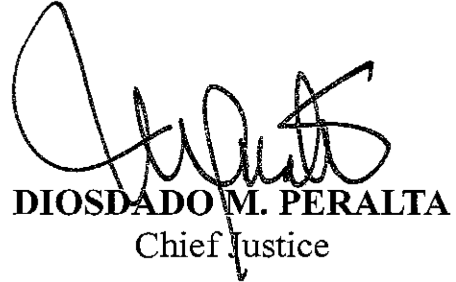
ATTESTATION

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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.



DIOSDADO M. PERALTA
Chief Justice