



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 28, 2019 which reads as follows:

“G.R. No. 227310 (People of the Philippines v. Myla Gatan y Sultan and Arjie Gatan y Bayani)

The Case

This appeal seeks to reverse the Decision¹ dated August 28, 2015 of the Court of Appeals in CA-GR CR-HC No. 06659 affirming the conviction of appellants Myla Gatan y Sultan and Arjie Gatan y Bayani for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165)² and imposing on them life imprisonment and fine of five hundred thousand pesos (P500,000.00).

The Proceedings Before the Trial Court

The Charge

Appellants Myla and Arjie were charged with violation of Section 5, Article II, RA 9165 under the following Information,³ viz:

That on or about [the] 27th day of May 2004, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense,

- over – seventeen (17) pages ...
93-A

¹ Penned by Associate Justice Rodil V. Zalameda (now a member of this Court) with the concurrences of Associate Justices Sesinando E. Villon and Pedro B. Corales; *Rollo*, pp. 2-16.

² Entitled "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as The Dangerous Drugs Act Of 1972, As Amended, Providing Funds Therefor, and for Other Purposes," approved on June 7, 2002.

³ Original Record, p. 1.

deliver, transport, distribute or act as a broker in the said transaction, 98.44 (ninety-eight point forty-four) gram[s] of white crystalline substance containing Methylamphetamine hydrochloride[,] a dangerous drug.

CONTRARY TO LAW.

The case was raffled to the Regional Trial Court – Branch 79, Quezon City.

On arraignment, appellants pleaded not guilty.⁴ Joint trial ensued.

Police Senior Inspector and Forensic Chemist Vivian C. Sumobay (PSI Sumobay), PO2 Rodel Tumangday (PO2 Tumangday),⁵ and PO2 Justino Florese (PO2 Florese) testified for the prosecution. On the other hand, appellants Myla and Arjie testified for the defense.

The Prosecution's Version

On May 27, 2004, around 10:30 o'clock in the morning, a confidential informant arrived at the Philippine Drug Enforcement Agency office (PDEA). He informed Police Chief Inspector Romualdo P. Iglesia (PCI Iglesia) that he arranged a drug deal with a certain Arjie and Myla, involving one hundred (100) grams of methylamphetamine hydrochloride, commonly known as "shabu," for one hundred thousand pesos (₱100,000.00). On the basis of such information, PCI Iglesia formed a buy-bust team composed of PO2 Justino Florese, and PO2 Rodel Tumangday, and seven others. PO2 Florese was designated as poseur-buyer and PO2 Tumangday as back-up arresting officer.⁶

PCI Iglesia furnished PO2 Florese with two pieces of genuine five hundred (500) peso bills with serial nos. K2634052 and ET243166, respectively. PO2 Florese marked the bills with his initials, "JPF." He secured the money inside a white window-type envelope together with the boodle money. They agreed that as their pre-arranged signal, PO2 Florese shall give the thumbs up sign with his right hand.⁷

- over -

93-A

⁴ Order dated September 2, 2004; Record, p. 40.

⁵ Also referred to as PO2 Tumanday in the TSN.

⁶ TSN dated June 2, 2008, pp. 5-6.

⁷ *Id.* at 7.

After coordinating with the local police at Camp Karingal, they proceeded to the target area along Commonwealth Avenue near the Shell Station going to Tandang Sora, Quezon City. There, PO2 Florese and the informant alighted from the vehicle. PO2 Tumangday positioned himself within a viewing distance and the rest of the team strategically positioned themselves.⁸

After a few minutes, a passenger jeepney stopped nearby and two persons, a male and a female, alighted therefrom. The two approached the informant. After a brief conversation, the informant introduced them to PO2 Florese as Myla and Arjie, herein appellants.⁹

Myla then asked payment from PO2 Florese for the “stuff” he earlier ordered through the informant. PO2 Florese flashed to Myla the white window-type envelope containing the marked and boodle money. When PO2 Florese asked to see the “stuff,” she brought out from her black handbag one (1) small carton box containing one knotted transparent plastic sachet suspected to contain *shabu*. She handed it to PO2 Florese, who examined the same.¹⁰

This time, it was Arjie who demanded payment from PO2 Florese. The latter readily handed Arjie the white window-type envelope and executed the thumbs up signal.¹¹ PO2 Tumangday closed in and together with PO2 Florese identified themselves as PDEA operatives. PO2 Florese informed appellants of their constitutional rights and arrested them. PO2 Tumangday recovered from appellant Arjie the white window-type envelope containing the buy bust money.¹²

PO2 Florese wrote his initials “JPF” on the specimen. He marked the seized items in their office upon the instruction of their team leader for security and safety reasons. PO2 Anju Villanueva conducted the inventory of the seized items in the presence of a public prosecutor and a *barangay* official.¹³ PO2 Florese then turned over the seized item to the Philippine National Police (PNP) Crime Laboratory for chemical analysis.¹⁴

- over -

93-A

⁸ *Id.* at 9-10.

⁹ *Id.* at 11.

¹⁰ *Id.* at 12-14.

¹¹ *Id.* at 14.

¹² TSN dated April 20, 2009, pp. 10-11.

¹³ TSN dated June 2, 2008, p. 12-14.

¹⁴ TSN dated January 28, 2009, pp. 4-9.

Around 6:46 in the evening of May 27, 2004, PSI Sumobay received the seized item and the request for laboratory examination. She did a qualitative examination on the specimen, the result of which tested positive for methylamphetamine hydrochloride or *shabu*. She reported her finding in her Chemistry Report No. D-226-04.¹⁵

The prosecution offered the following evidence: Police Referral Letter date May 28, 2004; Affidavit of PO2 Florese; Affidavit of PO2 Tumangday; Inventory of Seized Property; Coupon bond; Request for Laboratory Examination; Box; Knot-tied Plastic Bag containing the *shabu*; Initial Laboratory Report No. D-266-04; and Chemistry Report No. D-266-04.¹⁶

The Defense's Version

On May 27, 2004, around 10:30 in the morning, Myla and her husband Arjie were strolling inside the Quezon City Memorial Circle. Myla was a vendor while Arjie worked as a security guard.¹⁷ They took a break from their respective jobs because it was their anniversary.¹⁸ Around 4 o'clock in the afternoon, while waiting for a ride home, two strangers approached them. The strangers held them, poked them with a gun, and threatened to kill them if they resisted. They later learned that one of them was PO2 Florese who searched Arjie but got nothing from him. Arjie asked the men what they wanted from them but they said nothing. They forced them to board a black FX vehicle.¹⁹ While in transit, the strangers demanded appellants to show or take out the "thing". When they asked what it was the strangers were looking for, the latter refused to tell them.²⁰

When they reached the PDEA office, they were brought to the second floor and the strangers who turned out to be police officers again demanded for the "thing". Out of fear, Myla cried during the interrogation and was unable to say anything. PO2 Florese asked her for two hundred thousand pesos (₱200,000.00) in exchange for their release. She told him she did not have money. They made her call her brother which she did. She informed her brother that she and Arjie got arrested.²¹

- over -

93-A

¹⁵ TSN dated October 25, 2004, pp.6-13.

¹⁶ *Rollo*, p. 339

¹⁷ TSN dated August 20, 2010, pp. 3-7.

¹⁸ *Id.* at 13.

¹⁹ TSN dated September 6, 2013, pp. 3-8.

²⁰ TSN dated August 20, 2010, pp. 3-7.

²¹ *Id.* at 7-10.

The PDEA investigator talked to them and brought them to another table where they were made to wait for a long time. PO2 Tumangday then instructed them to duck under the table. Arjie saw PO2 Florese and his companions talking to each other at the other table. He saw someone taking a video in front of PO2 Florese's table. They were later detained on the ground floor.²²

The defense presented the following documentary evidence: 1) a picture dated January 31, 2004 of Arjie's training as security guard at the Shooter Security Services (Exhibit "1"); 2) Arjie's Police Clearance Certificate (Exhibit "2"); 3) Certificate issued by Tamaraw Training Center to Arjie Gatan for his participation in the program designed for the advancement of Guarding Profession (Exhibit "3"); 4) Certification from the PNP-Civil Security Group that Arjie Gatan passed the In-Service/RTC Examination (Exhibit "4"); 5) Arjie's SSS Personal Record (Exhibit "5"); 6) Copy of Arjie's application for Security License issued by the PNP (Exhibit "6"); 7) Clearance from the Office of the Quezon City Prosecutor that Arjie Gatan had no pending criminal complaint before the said office (Exhibit "7"); 8) Clearance from the Metropolitan Trial Court of Quezon City that per its record, there was no criminal case filed against Arjie Gatan (Exhibit "8"); 9) Arjie's National Bureau of Investigation Clearance (Exhibit "9"); 10) the Opening Report by Tamaraw Training Center (Exhibit "10") showing that Arjie Gatan was on the list of students enrolled in its RE-training Course; 11) Tamaraw Training Center's Closing Report showing that Arjie Gatan was one of the attendees in its Re-training Course conducted on August 19-24, 2002 (Exhibit "11").²³

The Trial Court's Ruling

By Judgment dated February 12, 2014,²⁴ the trial court found appellants guilty as charged, viz:

WHEREFORE, judgment is hereby rendered finding accused MYLA GATAN Y SULTAN and ARJIE GATAN Y BAYANI GUILTY beyond reasonable doubt of violation of Section 5[,] Article II of Republic Act 9165. Accordingly, they are hereby each sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Five Hundred Thousand (P500,000.00) PESOS.

- over -

93-A

²² TSN dated September 6, 2013, pp. 5-6.

²³ *Rollo*, pp. 340-341

²⁴ Original Records, pp. 334-361; Penned by Judge Nadine Jessica Corazon J. Fama.

The Branch Clerk of this Court is directed to immediately turn over to the Chief of PDEA Crime Laboratory, the drug evidence in this case to be disposed of in strict conformity with the provisions of R.A. 9165 and its implementing rules and regulations on the matter.

The Branch Clerk is, likewise, ordered to prepare the Mittimus for the immediate transfer of the accused Arjie Gatan y Bayani to the New Bilibid Prison in Muntinlupa City and the transfer of accused Myla Gatan y Sultan to the Correctional Institution for Women.

SO ORDERED.

The trial court found that: a) all the elements of illegal sale of dangerous drugs were present; b) appellants' acts showed unity of purpose to sell illegal drugs to PO2 Florese; and c) the integrity of the seized illegal drugs was preserved and the chain of custody remained intact.

The Proceedings Before the Court of Appeals

On appeal, appellants faulted the trial court for rendering the verdict of conviction despite the following infirmities: (1) the inventory of the seized items was not made in the presence of appellants or their representative; (2) no media representative witnessed the inventory and the photograph of the seized items; (3) the prosecution failed to overcome the constitutional presumption of innocence considering the substantial gaps in the chain of custody which rendered the integrity of the confiscated illegal drugs doubtful.²⁵

The People, through the Office of the Solicitor General, countered in the main: (1) the trial court correctly convicted appellants of the crime charged on the basis of the prosecution's physical, testimonial and documentary evidence, which duly established all the elements of sale of dangerous drugs; 2) the arresting team's failure to strictly comply with Section 21 RA 9165 was not fatal; (3) the integrity and evidentiary value of the seized specimen remained intact; and (4) appellants did not present any substantial and persuasive argument to warrant review of the case.²⁶

- over -

93-A

²⁵ Appellant's Brief dated December 5, 2014; *CA rollo*, pp. 59-61.

²⁶ Appellee's Brief dated March 23, 2015; *CA rollo*, pp. 108-120.

The Court of Appeals' Ruling

By Decision²⁷ dated August 28, 2015, the Court of Appeals affirmed.

The Present Appeal

Appellant now seeks affirmative relief from the Court and plead anew for a verdict of acquittal. For the purpose of this appeal, appellants and the People²⁸ manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

The Core Issues

- I. Was the chain of custody rule complied with?
- II. Assuming in the negative, did the saving clause operate to cure the procedural infirmities, if any, pertaining to the integrity and evidentiary value of the seized drug?

The Ruling

We acquit.

Appellants were charged with unauthorized sale of dangerous drug in violation of Section 5, Article II of RA 9165 allegedly committed on May 27, 2004. The applicable law therefore is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court, thus:

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

- over -

93-A

²⁷ Penned by Associate Justice Rodil V. Zalameda (now a member of the Court) with Associate Justices Sesinando E. Villon and Pedro B. Corales, concurring; *Rollo*, pp. 2-16.

²⁸ Appellee's Manifestation and Motion (In Lieu of Supplemental Brief) dated August 01, 2019; *Rollo*, pp. 27-30.

confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (Emphasis added)

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In relation thereto, Sec. 21 (a), Article II of the Implementing Rules of RA 9165 commands:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (Emphases added)

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In cases involving violations of RA 9165, the *corpus delicti* refers to the drug itself. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.²⁹

- over -

93-A

²⁹ *People v. Bumanglag y Sumalpon*, G.R. No. 228884, August 19, 2019, citing *People v. Ismael*, 806 Phil. 21, 29 (2017).

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: ³⁰ *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.³¹

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.³²

Here, the prosecution utterly failed to establish an unbroken chain of custody.

On cross, prosecution witness PO2 Flores testified:

- Q : Who recovered the *shabu* allegedly confiscated from the accused?
- A : It was, I, sir, because the suspect Alias Myla handed it to me.
- Q : Did you immediately mark the confiscated *shabu*?
- A : After the arrest, sir, the instruction of our team leader was to immediately proceed to our office for security reason and preparation of the necessary documents.
- Q : Where was your office located?
- A : It was in Brgy. Pinyahan, sir, Quezon City.
- Q : Where did this operation take place?
- A : Along Commonwealth near Shell gasoline station
- Q : How long did you travel from Shell gasoline station in Commonwealth to your office after the arrest?
- A : More or less 10 or 15 minutes, sir.

- over -

93-A

³⁰ As defined in Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

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³¹ *People v. Dahil*, 750 Phil. 212, 231 (2015).

³² *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

- Q : How about the inventory of the seized items from the accused, who prepared the same?
- A : It was the investigator PO2 Anju Villanueva.
- Q : It was already the investigator?
- A : Yes, sir.
- Q : How about you, what was your participation in the marking?
- A : While I was marking the seized items, he was the one recording it on the document.
- Q : Are you telling me that the inventory was prepared also in the police station?
- A : Yes, sir.
- Q : How about the taking of the photographs of the accused and the drugs confiscated together with both accused?
- A : The pictures were taken during the conduct of the inventory in the presence of the barangay officers.
- Q : But where are the pictures now?
- A : As of now I cannot produce it because it was in the custody of [the] investigator, sir, and we are really from the Metro Manila Regional Office, I cannot assure that I can recover said pictures because our locker has already been removed without our consent so those pictures might have been lost.³³

On re-redirect, PO2 Florese stated there were only two (2) witnesses during the inventory and picture taking, *viz.*:

- Q : And where were you when those photographs were taken?
- A : I was present, sir.
- Q : And who were present when those photographs were taken?
- A : The barangay officials and DOJ representative, sir.
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- Q : Mr. Witness have you seen those photographs?
- A : Yes, sir, I was present in taking of pictures but I did not see the photographs because it was in the custody of the investigator.³⁴

PO2 Tumangday confirmed that the marking and inventory took place in the PDEA office, *viz.*:

- Q : You said that there was an inventory, where did this inventory take place?
- A : It took place at our office, sir.
- Q : As PDEA agent, I assume you know that it must be done at the scene where the accused was arrested?
- A : It was the directive of our team leader for the safety of our team, sir.
- Q : At that time, was there any threat to your safety?
- A : Because our informant told us that our subject are Muslims.

- over -

93-A

³³ TSN dated January 28, 2009, pp. 4-6.

³⁴ *Id.* at 7-8.

- Q : Are you telling us that [their] being Muslims is a threat to your security?
- A : That is the directive of our team leader, sir, for the safety of our team.
- Q : Where did you make the markings?
- A : I'm not the one who made the markings, sir.
- Q : You said that you are the one who recovered the buy-bust money?
- A : Yes, sir.
- Q : Why did you not mark the buy-bust money when you are the one who recovered it?
- A : Because we were not able to mark it, sir.³⁵

It is a matter of record, therefore, that prosecution here breached the chain of custody in several instances.

First, the seized items were not marked immediately at the place of the arrest. *En route* to the PDEA Office, the same drug remained unmarked. Consequently, the seized drug got exposed to the possibility of switching or tampering while in transit to the police office.

*People v. Martin*³⁶ clarified that the marking should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items that enter the chain of custody, preventing switching, planting, or contamination of evidence.³⁷ In *Martin*, the Court acquitted the accused because the seized item was marked at the police station and not at the place of arrest.

The police officers' claim that the marking was done at the PDEA office because it was the instruction of their team leader to ensure their security, fails to persuade. Compliance with the prescribed procedure in authenticating the seized drug was not imposed for anyone's convenience, least of all the arresting officers. The short distance between the place of arrest and the PDEA office in this case certainly does not excuse non-compliance with the rule on immediate marking. On the contrary, the same raises more questions than a valid justification on the matter.

PO2 Florese testified that the members of the buy-bust team numbered ten (10) altogether when they arrested the unarmed appellants. How then could their safety be put at risk if they marked,

- over -

93-A

³⁵ *Id.* at 19-20.

³⁶ *People v. Martin*, G.R. No. 231007, July 1, 2019, citing *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

³⁷ *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

inventoried and photographed the drug at the place of arrest itself? Surely, carrying the drug all the way to the police station without prior marking, inventory and photograph exposed the seized drug to possible tampering or switching.

In *People v. Sood*,³⁸ the Court ruled that the buy-bust team could have planned the operation in such a way that any possible commotion could be avoided or contained. More, the buy-bust team's excuse of an existence of a commotion was not a justifiable reason for failure to conduct the inventory at the place of seizure because the armed members of the buybust team could have easily contained it.

In *Valencia v. People*,³⁹ the Court ordained that the arresting officers were obliged, should they be unable to comply with the procedures laid down under Section 21 of RA 9165 and its implementing rules, to explain why the procedure was not followed and prove that the reason provided a justifiable ground for non-compliance. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.

Second, as required, the physical inventory and taking of photographs of the seized drugs immediately after seizure or confiscation shall be done in the presence of the accused, a media representative, a representative from the DOJ, and any elected local official.

Here, PO2 Florese testified that all three (3) procedures were witnessed by a barangay official of Barangay Pinyahan, DOJ representative Fiscal Trevalles and appellants themselves.⁴⁰ He did not mention that a media representative was also present. Notably, the prosecution failed to acknowledge this deficiency, let alone, offer any explanation therefor.

The law mandates the presence of a media representative, together with the accused, a barangay official and DOJ representative during the marking, inventory and taking of photographs. Failure to comply with this requirement shall result in the acquittal of the accused. In *People v. Bumanglag*,⁴¹ the Court acquitted the accused

- over -

93-A

³⁸ *People v. Sood*, G.R. No. 227394, June 06, 2018, 865 SCRA 368, citing *People v. Cornel*, G.R. 229047, April 16, 2018.

³⁹ 725 Phil. 268, 286 (2014).

⁴⁰ TSN dated January 28, 2009, p. 8.

⁴¹ G.R. No. 228884. August 19, 2019.

therein for the prosecution's failure to provide justification for the absence of two of the required insulating witnesses, *i.e.* the DOJ and media representative. In *People v. Macud*,⁴² the Court declared that the absence of the required witnesses effectively invalidated the seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same.

More, the prosecution was not able to present the alleged photographs taken during the marking and the inventory of the seized items. In *People v. Monir Jafaar*,⁴³ the Court acquitted appellant for the prosecution's failure to comply with the photograph requirement. Failure to present the photograph of the seized sachet as evidence is a fatal break in the chain of custody.

Third, the prosecution failed to establish the proper turnover by the investigating officer of the illegal drug to the forensic chemist for analysis/examination. In fact, it was not the investigating officer who forwarded the illegal drugs but the arresting officer PO2 Florese who was supposed to have already turned it over to the former. Also, the prosecution did not present the investigating officer as one of its witnesses. PO2 Florese testified that he personally turned over the illegal drugs to the laboratory for examination, *viz.* :

- Q : Now, Mr. Witness, you said that these items were turned over to the crime laboratory, who turned over the items to the crime laboratory. If you recall?
- A : I personally turned it over to the crime laboratory, sir.
- Q : What evidence do you have to prove that indeed you were the one who personally turned (over) these items to the crime laboratory?
- A : Only the document which is the request for laboratory examination on [the] seized evidence which I turned over to the laboratory service of the PNP crime laboratory, sir. There was a stamp receipt on the lower portion which states "delivered by" (after) which my name, sir.⁴⁴

The breach did not stop there.

Forensic Chemist, PSI Sumobay testified that it was a certain PO1 Justino P. Lorenzo, Jr., not PO2 Florese, who submitted the request for laboratory examination and the specimen, *viz.*:

- over -

93-A

⁴² G.R. No. 219175, December 14, 2017, 849 SCRA 294, 323.

⁴³ 803 Phil. 582, 595 (2017).

⁴⁴ TSN dated September 29, 2008, p. 6.

- Q : Madam Witness, do you know who personally submitted the request for laboratory examination to your office?
- A : It was reflected in the letter request, sir. I refer to the letter request.
- Q : I am showing to you this letter request. Will you please tell us who personally submitted the request for laboratory examination to your office.
- A : It was a certain PO1 Justino P. Lorenzo, Jr.
- Q : You do not know personally this person?
- A : No, sir, I do not know him.
- Q : At the time he submitted this letter request to your office you were not around, am I right?
- A : I was the one who received the letter request as well as the specimen, sir.
- xxx xxxxxx
- Q : And you also stated that together with the request for laboratory examination you also received the specimen requested for examination, is that right?
- A : Yes, sir.⁴⁵

The materially opposing testimonies of the prosecution witnesses cast doubt on the integrity of the seized items specifically whether the specimen allegedly turned over to and examined by PSI Sumobay was the same one actually seized from appellants and eventually offered in evidence.

In *People v. Habana*,⁴⁶ the Court acquitted the accused for the prosecution's failure to present evidence on what the investigator on duty did with the seized articles, how these got to the laboratory technician, and how they were kept before being adduced in evidence at the trial. The failure in this case to comply with the procedure in the custody of seized drugs compromised the identity and integrity of the item seized, which is the *corpus delicti* of each of the crimes charged; hence, the accused's acquittal is in order.

Finally, PSI Sumobay only testified on the existence of the specimen and her examination thereof. But she did not testify on the handling and storage of the specimen as well as on how the drug items were brought from the crime laboratory and submitted in evidence to the court below.

In *People v. Miranda*,⁴⁷ the Court acquitted the accused therein due to the absence of testimony from any prosecution witness on how the drug items were brought from the crime laboratory and submitted

- over -

93-A

⁴⁵ TSN dated October 25, 2004.

⁴⁶ 628 Phil. 334, (2010).

⁴⁷ G.R. No. 218126, July 10, 2019 citing *People v. Alboka*, G.R. No. 212195, February 21, 2018.

in evidence to the court below. The prosecution's failure to show who brought the seized items before the trial court was considered a serious breach of the chain-of-custody rule.

Too, in *People v. Ubungen*,⁴⁸ the Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the **fourth link** in the chain of custody could not be reasonably established.

Indeed, the repeated breach of the chain of custody rule here cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly restrained petitioner's right to liberty. Verily, therefore, a verdict of acquittal is in order.

We have clarified that a perfect chain may be impossible to obtain at all times because of varying field conditions.⁴⁹ In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.⁵⁰ Section 21(a) of the Implementing Rules and Regulations of RA 9165 contains the following proviso:

Section 21. (a) x xx Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

On this score, *People v. Jugo*⁵¹ specified the twin conditions for the saving clause to apply:

[F]or the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

Here, neither PO2 Florese nor PO2 Tumangday offered any explanation which would have excused the buy-bust team's failure to

- over -

93-A

⁴⁸ G.R. No. 225497, July 23, 2018.

⁴⁹ *People v. Abetong*, 735 Phil. 476, 485 (2014).

⁵⁰ Section 21 (a), Article II, of the IRR of RA 9165.

⁵¹ G.R. No. 231792, January 29, 2018.

comply with the chain of custody rule. In other words, the condition for the saving clause to become operational did not arise. For the same reason, the proviso “so long as the integrity and evidentiary value of the seized items are properly preserved,” too, will not come into play.

Consequently, in light of the prosecution's failure to provide justifiable grounds for non-compliance with the chain of custody rule, appellant's acquittal is in order. *People v. Crispo*⁵² is *apropos*:

Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

Suffice it to state that the presumption of regularity in the performance of official functions⁵³ cannot substitute for compliance and mend the broken links in the chain of custody. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.⁵⁴ Here, the presumption was amply overturned by compelling evidence on record of the repeated breach of the chain of custody rule.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 28, 2015 of the Court of Appeals in CA-GR CR-HC No. 06659 is **REVERSED** and **SET ASIDE**.

Appellants **MYLA GATAN** and **ARJIE GATAN** are **ACQUITTED**.

The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant **ARJIE GATAN** from custody unless he is being held for some other lawful cause; and b) submit his or her report on the action taken within five (5) days from notice.

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93-A

⁵² G.R. No. 230065, March 14, 2018.

⁵³ RULES OF COURT, Rule 131, Section 3(m).

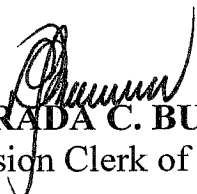
⁵⁴ *People v. Cabiles*, 810 Phil. 969, 976 (2017).

The Superintendent of the Correctional Institution for Women, Mandaluyong City is likewise ordered to (a) immediately release appellant **MYLA GATAN** from custody unless she is being held for some other lawful cause; and (b) submit his/her report on the action taken within five (5) days from notice.

Let an entry of final judgment be issued immediately.

SO ORDERED.” *Caguioa, J., on official leave; Inting, J., designated as Additional Member per S.O. No. 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court *off 2/21*
93-A

The Solicitor General
134 Amorsolo St., Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 06659)

The Hon. Presiding Judge
Regional Trial Court, Branch 79
1100 Quezon City
(Crim. Case No. Q-04-127161)

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

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Public Information Office (x)
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Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Ms. Myla S. Gatan (x)
Accused-Appellant
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Judgment Division (x)
Supreme Court

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