



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY

W. Lapitan
WILFREDO Y. LAPITAN
Division Clerk of Court
Third Division

AUG 15 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff-Appellee,

G.R. No. 202129

Present:

VELASCO, J., *Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

- versus -

EVELYN PATRICIO Y
CASTILLO, ALIAS "NINGNAY"
Accused-Appellant.

Promulgated:

July 23, 2018

Wilfredo Y. Lapitan

X ----- X

DECISION

MARTIRES, J.:

This appeal seeks a reversal of the 16 March 2011 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00647, which affirmed the 30 November 2006 Decision² of the Regional Trial Court, Branch 15, Roxas City (RTC), in Criminal Case Nos. C-130-04 and C-131-04 finding accused-appellant Evelyn Patricio y Castillo (*Evelyn*) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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¹ Rollo, pp. 3-16.

² CA rollo, pp. 27-55.

FACTS

Evelyn was charged in two separate informations, to wit:

Criminal Case No. C-130-04

That on or about the 23rd day of April 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and feloniously sell distribute and deliver to a police “poseur-buyer”, two (2) “boltos” or two (2) pieces big transparent heat-sealed plastic sachets containing suspected Methamphetamine Hydrochloride or “shabu” weighing 8.68 grams, a dangerous drug without the authority to sell and distribute the same.

CONTRARY TO LAW.³

Criminal Case No. C-131-04

That on or about the 23rd day of April 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and feloniously have in her possession and control 4.37 grams of methamphetamine hydrochloride (shabu), a dangerous drug, without being authorize (sic) by law to possess the same.

CONTRARY TO LAW.⁴

Evelyn pleaded not guilty to both charges. Thereafter, trial ensued.

Evidence for the Prosecution

The evidence for the prosecution tended to establish that in the afternoon of 23 April 2004, Police Officer 1 Rez G. Bernardez (*PO1 Bernardez*), then assigned at the Capiz Police Provincial Office, Roxas City, was at the vicinity of Capiz Emmanuel Hospital pursuant to a mission order for a buy-bust operation issued by Police Senior Inspector Leo Batiles (*P/SInsp. Batiles*). He was to act as poseur-buyer. PO1 Bernardez transacted with Evelyn through his cellular phone. They agreed to meet at 3:00 p.m. at the second floor corridor of the Capiz Emmanuel Hospital, the place chosen by Evelyn herself.

With the other members of the police team, PO1 Bernardez proceeded to the agreed place. There, PO1 Bernardez handed Evelyn a pouch containing money amounting to ₱20,000.00. In turn, Evelyn gave him a

³ Id. at 27.

⁴ Id. at 28.

brown, mailing-size envelope folded and tied with a rubber band supposedly containing *shabu*. Immediately after the exchange, PO1 Bernardez introduced himself as a police officer and placed Evelyn under arrest. Evelyn resisted and fought back, hitting PO1 Bernardez in the nose and threw the money back at him. PO1 Jesus Galleron, who was then about two to three meters away from them, arrested Evelyn and informed her of her constitutional rights. Thereafter, Evelyn was led to the parking area at the side of the hospital where the rest of the apprehending team converged. The brown mailing envelope was opened in front of her, revealing two (2) large transparent plastic sachets of supposed *shabu*, weighing 4.37 and 4.31 grams, respectively.

Afterwards, Evelyn was brought to the Roxas City Police Station where she was bodily searched by two policewomen: PO1 Moonyen de Joseph and PO1 Maria Sheila Albances. They found another big plastic sachet of suspected *shabu*, weighing 4.37 grams, inside the secret pocket of her pants.

The seized items were turned over to the PNP Crime Laboratory of Iloilo City. After laboratory examination, the specimens were found positive for methamphetamine hydrochloride or *shabu*.

Evidence for the Defense

Evelyn testified that in the morning of 22 April 2004, she was in her house at Capricho II, Roxas City, preparing the clothes that she would wear for her nephew's wedding that afternoon. According to her, she only came to Roxas City to attend the wedding. In the morning of 23 April 2004, she and her driver, Louie Llena, went to Dao to look at a truck that his brother-in-law was interested in buying. From Dao, they returned to Roxas City at past 1:00 p.m. They proceeded to Gaisano Mall before going back to Capricho.

While resting at home, Evelyn was distracted by a text message on her cellphone from one Ronnie Detoga (*Ronnie*) asking her to go to Capiz Emmanuel Hospital where he would pay the ₱30,000.00 loan Ronnie allegedly borrowed two months prior, and which was used as bail bond for his wife Swannie Dela Cruz.

At about three o'clock in the afternoon, Evelyn proceeded to the second floor corridor of Capiz Emmanuel Hospital where Ronnie was waiting. Upon reaching the place, Ronnie handed her a pouch or "poyo" made of cloth as big as her palm. Trusting Ronnie, she did not open the pouch anymore and simply placed it inside her handbag. She then went out of the hospital through the door leading to the parking lot. To her great surprise, she saw a man standing about three arm-lengths away with a gun



pointed at her. Stunned, she asked if it was a holdup. The man approached her, held her by the hand, and said, "Do not run! I will shoot you!" Thereafter, a second man arrived and took away her bag. The second man opened her bag, took the pouch that Ronnie had given and exclaimed, "This is our pouch!" Later on, several policemen, media men, and the barangay captain arrived and poured out the contents of her bag, but no illegal drugs were found. She was then made to board a multicab and was brought to the Roxas City Police Station.

Upon arriving at the Roxas City Police Station, she was ordered to enter a room where two policewomen were waiting. The policewomen made her strip naked and searched her body, and even made her bend over so they could probe her private part. Finding nothing from their search and probing, the two policewomen went out of the room. Later on, the policewomen returned with the barangay captain, and they presented to the latter a plastic sachet of suspected *shabu* allegedly retrieved from Evelyn. She denied ownership thereof.

Swannie Dela Cruz testified that on 23 April 2004, she was at the house of one Nimfa Martirez (*Nimfa*) with her live-in partner, Ronnie. At that time, Ronnie was waiting for P/SInsp. Batiles as they had something to talk about. P/SInsp. Batiles arrived at Nimfa's house and told them that they would set up Evelyn, alias "Ningnay," because the police had been looking for her for a long time. P/SInsp. Batiles gave Ronnie money and *shabu* to be used in setting her up. The *shabu* was placed in a brown envelope and the money in a red pouch with floral design.

Later in the afternoon, Swannie heard over the radio that Evelyn was apprehended. She immediately went to Capiz Emmanuel Hospital to see Ronnie, but the latter was no longer there. That same evening, she and Nimfa went to the house of a certain Gaga Cordovero, an alleged member of the Provincial Anti-Illegal Drugs Special Operations Task Force (*PAIDSOTF*) to inquire as to the whereabouts of Ronnie. P/SInsp. Batiles, who was present, told her not to worry because Ronnie was safe in their camp at Loctugan, Roxas City. P/SInsp. Batiles then brought her to that camp. There, a certain Col. Bautista talked to her and asked her how much she needed for her bail bond, to which she responded ₱30,000.00. Col. Bautista offered to give her the money as reward for helping in the arrest of Evelyn. As ordered by Col. Bautista, a police officer and a companion of P/SInsp. Batiles by the name of Bebot Escoltero delivered the money to them.

Jose Francisco, Jr. (*Francisco*) testified that he was a security guard assigned at Capiz Emmanuel Hospital; that during his tour of duty on 23 April 2004, from seven o'clock in the morning to three o'clock in the afternoon, his attention was never called regarding any buy-bust operation



conducted by the police at the hospital; and that it was the practice of security guards to conduct a roving inspection of the premises. Eduardo Almario, another security guard, corroborated Francisco's testimony and attested that during his roving inspection, he did not notice any unusual incident like a buy-bust operation taking place inside the hospital's premises.

The RTC Ruling

The RTC found Evelyn guilty of the crimes charged. In so ruling, it held that Evelyn's account of her transaction with Ronnie at Capiz Emmanuel Hospital was unbelievable. According to the trial court, it was illogical and contrary to the natural course of human behavior for Evelyn not to open the pouch handed her and to count the money inside. It noted that it was the first time Evelyn met Ronnie. As such, it was absurd to claim that she had full trust in his person. Moreover, Ronnie was not even presented to corroborate Evelyn's testimony. Additionally, the RTC stated that for evidence to be believed, it must not only proceed from the mouth of a credible witness, but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.

Likewise, the trial court was unconvinced that Evelyn was framed up. It ruled that an illegal sale of dangerous drugs had indeed taken place; and that the *corpus delicti* was positively identified during its presentation in court. In the RTC's analysis, several points militated against Evelyn's theory that evidence was merely planted on her person. For one, it found unbelievable that no one saw the grouping of several policemen, barangay, and media personnel at the hospital's parking lot where Evelyn was allegedly restrained by POI Bernardez for about thirty minutes. This, despite the fact that the defense had already made of record that security guards were posted at every entrance including the gate leading out of the parking area. Also, the RTC brushed aside the contention that Evelyn would not have sold drugs in a public place, in broad daylight, and to a virtual stranger. Citing jurisprudence, it declared that familiarity between the buyer and the seller is of no moment, for what matters is the fact of agreement, as well as the act constituting sale and delivery of prohibited drugs. The decretal portion reads:

“WHEREFORE, premises considered, this Court finds –

(1) In Criminal Case No. C-130-04, accused EVELYN PATRICIO Y CASTILLO alias “NINGNAY,” GUILTY beyond reasonable doubt of VIOLATION OF SECTION 5, ARTICLE II of R.A. 9165, otherwise known as the COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, and hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and a fine of ₱500,000.00



(2) In Criminal Case No. C-131-04, accused EVELYN PATRICIO Y CASTILLO alias “NINGNAY” GUILTY beyond reasonable doubt of the crime of VIOLATION of SECTION 11, ARTICLE II of R.A. 9165, otherwise known as the COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, and hereby sentences her to suffer an indeterminate penalty of imprisonment of SIX (6) YEARS and ONE (1) DAY of Prison Mayor as Minimum to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal as Maximum and to pay a fine of ₱200,000.00.

In the service of her sentence in Crim. Case No. 131-04, accused Evelyn Patricia y Castillo alias “Ningnay,” shall be credited with the full time during which she has undergone preventive imprisonment provided she agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.⁵

Dissatisfied, Evelyn sought recourse before the CA.

The CA Ruling

The assailed CA decision affirmed the RTC’s ruling, but with modification as to the penalty imposed in Criminal Case No. C-131-04.

The appellate court began its disquisition by noting that Evelyn was a well-known drug pusher operating in Roxas City. It found that the buy-bust operation was spearheaded by the combined efforts of the PAIDSOTF and PDEA – agencies tasked to track down suspected members of syndicated drug groups; and that the buy-bust operation was conducted in order to verify reports received against Evelyn. According to the CA, there was no reason for these government agencies to accuse Evelyn of something she was not guilty of; and, besides, she failed to cite any motive for the arresting officers to frame her up. It also opined that testimonies of police officers who conduct buy-bust operations are generally accorded full faith and credit as they are presumed to have performed their duty in a regular manner.

In the same vein, the CA did not lend credence to Swannie Dela Cruz’ testimony for it being self-serving and uncorroborated, taking into account the fact that such testimony was elicited from a person also accused of a crime involving violation of the Comprehensive Dangerous Drugs Act.

The CA was convinced that the elements of illegal sale and possession of dangerous drugs were established with moral certainty. It sustained the RTC’s finding that Evelyn was caught *in flagrante delicto* delivering *shabu* to PO1 Bernardez. Meanwhile, the seized contraband was marked and identified through Chemistry Report No. D-96-04. Accordingly, the CA held

⁵ CA rollo, p. 55.



that the dangerous drugs recovered from Evelyn were admissible as evidence. The dispositive portion states:

WHEREFORE, the Decision dated November 30, 2006 of the Regional Trial Court, 6th Judicial Region, Branch 15, Roxas City is **AFFIRMED** with MODIFICATION in that in Crim. Case No. C-131-04, appellant is sentenced to an indeterminate prison term of twelve (12) years and one (1) day to twenty (20) years with a fine of Three Hundred Thousand Pesos (₱300,000.00).

SO ORDERED.⁶

Undaunted, Evelyn calls upon the Court to review her case.

In a Resolution,⁷ dated 30 July 2012, the Court required the parties to submit their respective supplemental briefs simultaneously, if they so desire. In a manifestation,⁸ Evelyn stated that she was adopting her appellant's brief filed before the CA. In like manner, the Office of the Solicitor General manifested that it was adopting its brief filed before the CA and would already dispense with the filing of a supplemental brief.

ISSUE

WHETHER EVELYN'S GUILT FOR THE CRIMES CHARGED WAS PROVEN BEYOND REASONABLE DOUBT.

THE COURT'S RULING

An appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.⁹ Impelled by this duty, we took a second hard look at the records. After a painstaking review of the evidence and testimonies presented, the Court finds that there is palpable noncompliance with the requirements of Section 21, Article II of R.A. No. 9165.

For cases involving illegal sale of *shabu*, the following elements must be established: (1) the identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment thereof. On the other hand, the offense of illegal possession of *shabu* has the following elements: "(1) the accused is in possession of an item or an object which is identified to be a prohibited drug; (2) such

⁶ *Rollo*, p. 16.

⁷ *Id.* at 20-21.

⁸ *Id.* at 34-35.

⁹ *Ungsod v. People*, 514 Phil. 472, 486 (2005).



possession is not authorized by law; and (3) the accused freely and consciously possessed said drug.¹⁰

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug, and the existence of the *corpus delicti*. In securing or sustaining a conviction for either illegal sale or illegal possession under R.A. No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved.¹¹

Conviction cannot be sustained if there is a persistent doubt on the identity of the *corpus delicti*. Apart from showing that the elements of possession or sale are present, the fact that the *shabu* illegally possessed and sold is the same *shabu* offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.¹² In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.¹³ To show that the drugs examined and presented in court were the very ones seized from the accused, testimony as to the *chain of custody* of the seized drugs must be presented.¹⁴ The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed.¹⁵

Section 21, Article II of R.A. No. 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved. Under the said section, prior to its amendment by R.A. No. 10640,¹⁶ the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and take photographs of the seized items in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes.¹⁷



¹⁰ *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

¹¹ *People v. Nuarin*, 764 Phil. 550, 557 (2015).

¹² *People v. Gayoso*, G.R. No. 206590, 27 March 2017, *supra* note 8.

¹³ *People v. Calvelo*, G.R. No. 223526, 6 December 2017.

¹⁴ *People v. Dimaano*, 780 Phil. 586, 604 (2016).

¹⁵ *People v. Havana*, 776 Phil. 462, 471 (2016).

¹⁶ Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" approved on 15 July 2014.

¹⁷ *People v. Año*. G.R. No. 230070, 14 March 2018.

Jurisprudence has been instructive in illustrating the links in the chain that need to be established:

First, the seizure and marking, if practicable, 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.¹⁸

The records in this case show no evidence that the buy-bust team followed the outlined procedure.

The integrity of the evidence presented – the *corpus delicti* no less – became suspicious by the inability of the records to illustrate the links in the chain of custody after the alleged buy-bust transaction at Capiz Emmanuel Hospital.

The Court must thus undo the judgement of conviction.

There was no marking of the seized shabu.

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.¹⁹

Here, the prosecution failed to establish that PO1 Bernardez or any member of apprehending team had placed their initials and signature on the *shabu* seized from Evelyn during the buy-bust operation.

¹⁸ *People v. Siaton*, 789 Phil. 87, 98-99 (2016).

¹⁹ *People v. Doria*, 750 Phil. 212, 232 (2015).



[PROSECUTOR POSADAS]

Q: And after you received the items from out of the sale using those marked money what did you do?

A: I declared a buy-bust.

Q: After you had declared a buy-busy what happened?

A: She was surprised, she won't believe that I was a policeman.

[COURT]

Q: How did she express her surprise?

A: She hit me in my nose with her hands.

Q: How did she do it?

A: She was about to throw the money, she raised her hands and going to my face (witness demonstrating by raising her hands up and down).

[PROSECUTOR POSADAS]

Q: And what did you do when she raised her hands as if to throw the money hitting your nose?

A: I did not push her in return but I hold her hands and said to her just be calm all things must be safe just relax, thereafter my back-up agent was helping me also.

Q: Who was that PDEA?

A: Police Officer Galleron.

Q: And you arrested Evelyn Patricio right there (sic) and there?

A: Yes, sir.

Q: And where did you bring her?

A: To the parking area of the hospital.

Q: What did you do at the parking area of the hospital?

A: When the group of Sir Batiles arrived we brought her down in a casual manner so that the people will not panic inside.

Q: And from the parking area of Capiz Emmanuel Hospital where did you go?

A: To the Roxas City Police Station.

Q: Did you have it entered in the police blotter book of the police station?

A: Yes, sir.

Q: And what did you do with the two (2) bolts of *shabu* that you have recovered or delivered to by accused Evelyn Patricio?

A: I turned it over to our PSINSP Leo Batiles.²⁰

The foregoing shows that there was already a break in the very first link of the chain when PO1 Bernardez and his team failed to mark the two

²⁰ TSN, 28 May 2004, pp. 22-25; Direct Examination of PO1 Bernardez.

(2) “bolto” of *shabu* immediately upon their seizure. It is daylight clear that the seized items underwent an exchange of hands without prior marking. From the moment the drugs left PO1 Bernardez’ custody without the corresponding markings, its identification in Court was essentially relegated to guesswork. At this early stage, uncertainty had loomed on whether the drugs presented as evidence during trial were the same drugs confiscated from Evelyn’s person. Veritably, attainment of moral conviction that all subsequent handlers of the confiscated drugs dealt with the same specimens retrieved from Evelyn was perforce illusory.

The same break applies as regards the *shabu* recovered during the body search conducted at the Roxas Police Station which formed the basis of Evelyn’s conviction for illegal possession. The policewomen who conducted the search also made no markings on the items allegedly recovered from the secret pocket of Evelyn’s pants.

[PROSECUTOR POSADAS]

Q: How big was that sachet that you recovered from the secret pocket of her pants?

A: Just like this. (Witness demonstrating by raising her both hands).

Q: Are you familiar with that Ajinomoto pack?

A: Smaller than that of the one (1) peso worth of Ajinomoto pack.

Q: If that sachet that you recovered from the secret pants of the accused be shown to you, will you be able to identify the same?

A: Yes, sir.

Q: I am showing to you this plastic sachet which is already marked as Exh. “M” for the prosecution, will you please go over this if this is the one that you are referring to?

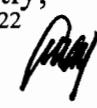
A: Yes sir, this is the one.

Q: Now, after you have recovered this Exh. “M” from the secret pocket of the accused, what did you do next?

A: We presented it to Police SInsp. Batiles.

Q: And after that what did you do with the accused?

A: We instructed her to just sit down and we will wait for the next instruction of Police SInp. Batiles.²¹

The police officers did not even bother to explain why they failed to mark or why they could not have marked the seized items immediately upon confiscation. Since the drugs were not properly marked, it could not, therefore, be determined how the unmarked drugs were handled. Evidently, alteration of the seized items was a possibility absent immediate marking.²² 

²¹ TSN, 11 October 2004, pp. 10-11; Direct Examination of PO1 Moonyen De Joseph.

²² *People v. Doria*, supra note 19 at 233.

It was claimed that the seized items were turned over to P/SInsp. Batiles after Evelyn's arrest. The prosecution, however, did not present him to testify on the identity of the items he received from PO1 Bernardez and PO1 Moonyen de Joseph. This is fatal to the prosecution's case, as absence of testimony from P/SInsp. Batiles engendered yet another missing link in the chain – turnover of the illegal drugs seized by the apprehending officer to the investigating officer. In a manner of speaking, the trail had gone cold during the interregnum that P/SInsp. Batiles purportedly had custody of the *shabu*.

Meanwhile, the court notes that during the hearing for Evelyn's application for bail, forensic chemist P/SInsp. Agustina L. Ompoy (*PSI Ompoy*) testified that she conducted a laboratory examination on the contents of three transparent plastic sachets of suspected *shabu* that accompanied a letter-request sent by P/SInsp. Batiles. She stated that the laboratory examination of these three sachets yielded positive for methamphetamine hydrochloride (*shabu*); and that two (2) heat-sealed transparent plastic sachets had the markings "EP 1a" and "EP 1b" and weighed 4.37 grams and 4.31 grams, respectively, while one heat-sealed plastic sachet with marking "EP 2" weighed 4.37 grams.²³

Despite sifting through the records with a fine-toothed comb, the Court found no testimony on how the markings "EP 1a," "EP 1b," and "EP 2" were placed on the specimens supposedly recovered from Evelyn. Not one of the prosecution witnesses attested to having placed the said markings on the plastic sachets. In fact, it appears that the prosecution witnesses who took the stand are oblivious to these markings, as not a single one of them referred to the said markings for identification during their respective testimonies. The purpose of marking is to obviate the situation that prosecution witnesses would have to rely on guesswork in identifying the seized contraband. Here, the very ill sought to be prevented by the marking requirement was, contrarily, demonstrated, *viz*:

[PROSECUTOR POSADAS]

Q: How did you conduct the body search on the accused, did you remove clothing?

A: We removed the upper and lower clothing together with the underwear.

Q: On the first thing you did when you remove her upper clothing, her bra, did you recover something?

A: No, Sir.

Q: How about when you removed her pants and her underwear, have you recovered something?

²³ RTC Records, 23 June 2004, p. 60; Order.

A: Inside the pocket of her pants we recovered a small plastic sachet of which containing shabu?

Q: Who recovered from her pants that suspected sachet of shabu?

A: I, Sir.

Q: If that suspected plastic sachet of shabu recovered from the pants of accused Evelyn Patricio be shown to you could you be able to identify it?

A: No, Sir.

[ATTY. FAGUTAO]

The witness answered No.

[PROSECUTOR POSADAS]

May I repeat the question, Your Honor?

[COURT]

Okay, please repeat your question.

[PROSECUTOR POSADAS]

Q: If that sachet of shabu be shown to you, could you be able to identify it?

A: Yes, sir.

Q: I am showing to you a sachet already marked as Exh. "N," will you please go over this if this if this is the sachet that you have recovered from the pants of the accused Evelyn Patricio?

A: This is not.

Q: I am showing to you another 2 sachet already marked as Exh. "N" and "N-1". Exh "N" is weighing 4.47 grams and Exh. "N-1" is weighing 4.31 grams, Exh. "N" is 4.47 grams, I am showing you this 3 sachets, which of these 3 sachets were you able to recovered from the pants of accused, Evelyn Patricio?

A: This one Sir. (referring to Exh. "N")²⁴

In addition to the absence of marking, the requirements of making an inventory and taking of photographs of the seized drugs were likewise omitted without offering an explanation for its noncompliance. The Court simply cannot brush aside this flaw, considering that the exactitude which the state requires in handling seized narcotics and drug paraphernalia was even reinforced by an amendment made to Section 21 by R.A. No. 10640. Section 21(1), as amended, now includes the following proviso, thereby making it even more stringent than as originally worded:²⁵



²⁴ TSN, 8 November 2004, pp. 38-40; Direct Examination of PO1 Maria Sheila Albances. (all emphasis ours)

²⁵ *Lescano v. People*, 778 Phil. 460, 475 (2016).

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:

Presumption of regularity in the performance of duty is unavailing.

It is true that where no improper motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail. Such presumption, however, obtains only where there is no deviation from the regular performance of duty. A presumption of regularity in the performance of official duty applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law. Conversely, where the official act is irregular on its face, the presumption cannot arise. Hence, given the obvious evidentiary gaps in the chain of custody, the presumption of regularity in the performance of duty cannot be applied in this case. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.²⁶

In *People v. Gatlabayan*,²⁷ the Court had the occasion to state that it is not unaware of the drug menace besetting our country and the direct link of certain crimes to drug abuse. The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable. Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted. Although the courts are committed to assist the government in its campaign against illegal drugs, a conviction under the Comprehensive Dangerous Drugs Act of 2002 can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt.²⁸

Otherwise, this Court, as vanguard of constitutional guarantees, is duty bound to uphold the constitutional presumption of innocence, without prejudice to how notorious or renowned a drug personality an accused is perceived to be.

All told, we find that the prosecution failed to: (1) overcome the presumption of innocence which accused-appellant Evelyn enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation as to why the provisions of

²⁶ *People v. Siaton*, supra note 18 at 108.

²⁷ *People v. Gatlabayan*, 669 Phil. 240, 261 (2011).

²⁸ *Id.*

Section 21, R.A. No. 9165 were not complied with. Consequently, we are constrained to acquit Evelyn based on reasonable doubt.²⁹

WHEREFORE, the appeal is **GRANTED**. The assailed 16 March 2011 Decision of the Court of Appeals in CA-GR. CR-HC No. 00647, which affirmed the 30 November 2006 Decision of the Roxas City Regional Trial Court, Branch 15, in Criminal Case Nos. C-130-04 and C-131-04 is hereby **REVERSED** and **SET ASIDE**.

Accused-appellant Evelyn Patricio y Castillo is **ACQUITTED** on both charges based on reasonable doubt.

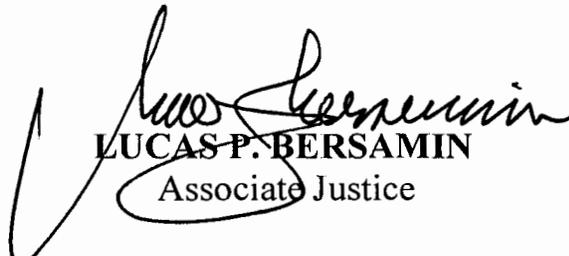
The Director of the Bureau of Corrections is directed to cause her immediate release, unless she is being lawfully held for another cause.

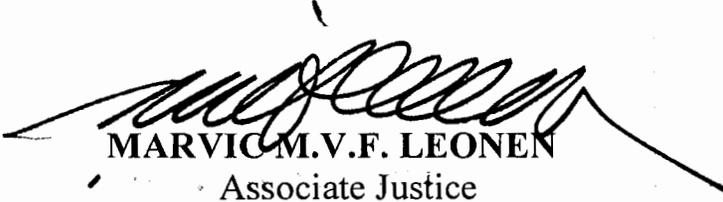
SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice

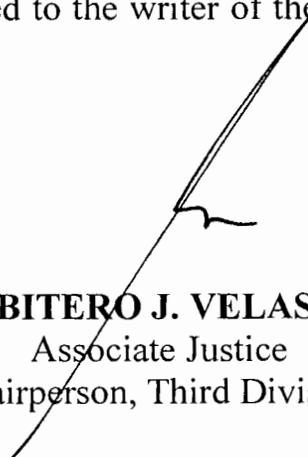

MARVIC M.V.F. LEONEN
Associate Justice

²⁹ *People v. Ismael*, G.R. No. 208093, 20 February 2017.


ALEXANDER G. GESMUNDO
 Associate Justice

ATTESTATION

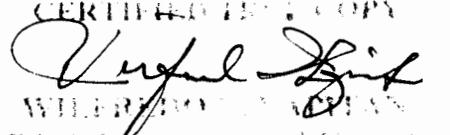
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

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


ANTONIO T. CARPIO
 Senior Associate Justice
 (Per Section 12, R.A. 296,
 The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY

 WILFREDO C. ACAYAN
 DIVISION CHIEF OF COURT
 THIRD DIVISION
 AUG 11 2021