



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapidan
WILFREDO V. LAPIDAN
Division Clerk of Court
Third Division

AUG 15 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 224293

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GISMUNDO, JJ.

- versus -

ALLAN LUMAGUI y MALIGID,
Accused-Appellant.

Promulgated:

July 23, 2018

X ----- *Wilfredo V. Lapidan* ----- X

DECISION

MARTIRES, J.:

Through this appeal, accused-appellant Allan Lumagui y Maligid seeks the reversal and setting aside of the 24 April 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06423, affirming the 2 September 2013 Decision² of the Regional Trial Court, Branch 36, Calamba City (RTC), finding him guilty beyond reasonable doubt of Violation of Sections (Sec.) 11 and 26, Article (Art.) II, of Republic Act (R.A.) No. 9165.³ *Pray*

¹ Rollo, pp. 2-13.

² Records (Crim. Case No. 17178-2010-C, pp. 167-175.

³ 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" dated 7 June 2002.

THE FACTS

Accused-appellant was charged with violation of Sec. 11, Art. II of R.A. No. 9165 in an information docketed as Criminal (*Crim.*) Case No. 17178-2010-C, the accusatory portion of which reads as follows:

That on or about 4:45 in the afternoon of March 25, 2010, in Barangay Pansol, Calamba City, Province of Laguna, within the jurisdiction of this Honorable Court, the above-named accused, without authority of the law, did then and there willfully, unlawfully, and feloniously have in his possession five (5) pieces of plastic sachet[s] containing Methamphetamine Hydrochloride, otherwise known as shabu, which is a dangerous drug, having a total weight of 0.12 gram in violation of the above-cited law.⁴

In *Crim. Case No. 17179-2010-C*, accused-appellant and Antonio D. Rueda (*Rueda*) were charged with violation of Sec. 26, Art. II of R.A. No. 9165, viz:

That on or about 4:45 in the afternoon of March 25, 2010, in Barangay Pansol, Calamba City, Province of Laguna, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping each other, without authority of the law, did then and there willfully, unlawfully, and feloniously sell to a poseur-buyer one piece of plastic sachet containing Methamphetamine Hydrochloride, otherwise known as shabu, which is a dangerous drug, having a total weight of 0.02 gram, in violation of the above-cited law.⁵

After pleading not guilty⁶ to the charges against him, accused-appellant moved⁷ that the cases be consolidated as these involved the same incident. The motion was granted,⁸ hence, a joint hearing of these cases was conducted.

To prove its charges, the prosecution called to the witness stand Forensic Chemist Lalaine Ong-Rodrigo (*Ong-Rodrigo*), Police Officer 1 Richard Cruz (*PO1 Cruz*) of the Philippine National Police (*PNP*) Cabuyao, Laguna, and PO2 Allen Llorente (*PO2 Llorente*) of the PNP Provincial Office, Sta. Cruz, Laguna.

Accused-appellant testified on his own behalf to prove his defense. 

⁴ Records (*Crim. Case No. 17178-2010-C*) p. 1.

⁵ Records (*Crim. Case No. 17179-2010-C*) p. 1.

⁶ Records (*Crim. Case No. 17178-2010-C*) pp. 33 and 41.

⁷ Id. at 24-25.

⁸ Id. at 35.

On the one hand, Rueda, who pleaded not guilty in Crim. Case 17179-2010-C, died⁹ even before the defense could start presenting its evidence, thus, the charge against him was dismissed.¹⁰

Version of the Prosecution

On 25 March 2010, the PNP Cabuyao, through Colonel Nestor B. dela Cueva (*Col. Dela Cueva*), received a complaint that Rueda, also known as “Papang,” and a certain alias “Ninang” were still involved in the selling of illegal drugs. This information prompted Captain Rogel Sarreal (*Capt. Sarreal*) to form two teams that separately conducted buy-bust operations on Rueda and alias “Ninang.”¹¹

Senior Police Officer 1 Naredo (*SPO1 Naredo*), PO2 Llorente, PO1 Cruz, Capt. Sarreal, and a civilian asset composed the team assigned to the buy-bust operation on Rueda. On that same day, the team proceeded to an abandoned resort at Purok 3, Barangay Pansol, Calamba City, where the sale transaction was to take place. SPO1 Naredo, PO2 Llorente and Capt. Sarreal positioned themselves at the corner of the railroad track near the resort. The asset proceeded to the resort gate where Rueda was waiting, while PO1 Cruz positioned himself at about three to five arm-lengths away from the asset. Rueda asked the asset if he would “get” and the latter replied that he would “get worth ₱200.00” at the same time handing to Rueda the ₱200.00 marked money. When Rueda called out to someone from inside the resort to bring out one sachet, it was accused-appellant came out with a plastic sachet which he handed to Rueda who, in turn, gave it to the asset. Rueda told the asset that he had some more sachets should he want more.¹²

Immediately after the asset parted from Rueda and accused-appellant, the buy-bust team rushed to arrest Rueda and accused-appellant. PO1 Cruz handcuffed Rueda and confiscated the buy-bust money from him. After having been handed the plastic sachet sold by Rueda to the asset, PO1 Cruz marked it “AML-RMC.”¹³

The buy-bust team bodily searched accused-appellant and found five plastic sachets which PO1 Cruz marked as “AML-RMC1,” “AML-RMC2,” “AML-RMC3,” “AML-RMC4,” and “AML-RMC5.” It was only after the marking of the seized items that the Pansol barangay officials were called to the crime scene and the incident was entered in the barangay blotter.¹⁴

⁹ Id. at 118.

¹⁰ Id. at 120.

¹¹ TSN, 3 August 2011, pp. 3-5.

¹² Id. at 6-11.

¹³ Id. at 11-13.

¹⁴ Id. at 13-15.

The testimony of Ong-Rodrigo was dispensed with after the parties agreed to stipulate on the following:

1. [Her] qualification and expertise;
2. That pursuant to a letter request for laboratory examination on May 25, 2010 signed by Nestor dela Cueva, the six (6) specimens and the requests were delivered by PO2 Llorente to the Crime Laboratory. Witness examined the following six (6) specimens:
 - a) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC" (Exh. "D") with 0.02 gram;
 - b) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC1" (Exh. "D1") with 0.03 gram;
 - c) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC2" (Exh. "D2") with 0.02 gram;
 - d) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC3" (Exh. "D3") with 0.02 gram;
 - e) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC4" (Exh. "D4") with 0.02 gram;
 - f) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC5" (Exh. "D5") with 0.03 gram;

And after quarantine examination, she found the specimen mentioned together with their corresponding weights positive (+) for methamphetamine hydrochloride. After which, she issued chemistry report no. D-105-10.

3. The authenticity and due execution of chemistry report no. D-105-10.¹⁵

Version of the Defense

On 25 March 2010, accused-appellant went to the house of Rueda at Villa Peregrina, Pansol, Calamba City, to sort out his problems at home. While accused-appellant was sleeping in Rueda's house at around 4:00 p.m., he was roused by a noise from outside. As accused-appellant was about to open the door to check what was happening, two armed men in civilian clothing ordered him to lie on his stomach and asked if he was Joaquin Bordado. As accused-appellant was about to lie down, he told them that his name was Allen Lumagui. Several other persons arrived thereafter.¹⁶



¹⁵ Records (Crim. Case No. 17178-2010-C) pp. 82-83.

¹⁶ TSN, 5 June 2012, pp. 3-5.

PO2 Llorente, who was his batch mate in school, brought accused-appellant to a room where he was asked what he was doing in Rueda's house. Accused-appellant told him he had left home. PO2 Llorente's companions then asked accused-appellant the whereabouts of a gun; when he said he did not know about it, he was asked where Rueda was. Accused-appellant told them that he did not know where he went.¹⁷

When Rueda came home after a few minutes, he was immediately handcuffed and, together with accused-appellant, was brought to the living room where the armed men continued to ask for the whereabouts of a gun. Rueda told them that there was no gun in the house and said that they had found nothing when they searched the place. PO2 Llorente brought out a bag, poured out its contents, i.e., lighters and plastic sachets containing a white substance, on top of the table in front of Rueda and accused-appellant, arranged the items, and took pictures of the items together with Rueda and accused-appellant. Thereafter, the barangay officials arrived and jotted down accused-appellant's identification card in a logbook. Rueda and accused-appellant were made to board a pick-up and were brought to the police station.¹⁸

The Ruling of the RTC

The RTC held that, although not all the requirements under Sec. 21 of R.A. No. 9165 were complied with, it believed that the integrity of the evidence had been duly preserved. It ruled that there was no showing that the arresting officers had ill motive against accused-appellant as in fact PO2 Llorente was his friend. It held that the prosecution was able to prove that accused-appellant, together with Rueda, was arrested in a legitimate buy-bust operation. Accused-appellant was positively identified by the prosecution witnesses and was caught in conspiracy with Rueda in the sale and possession of *shabu* and that the chain of custody was substantially proven. The RTC further ruled that the defense failed to overcome the presumption that the police officers had performed their duty with regularity.¹⁹

The dispositive portion of the RTC decision reads:

WHEREFORE, in view of the foregoing, the accused **ALLAN M. LUMAGUI** is hereby found **GUILTY** beyond reasonable doubt of committing both offenses, as charged and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and a fine of **FIVE HUNDRED THOUSAND PESOS (PHP500,000.00)** for Crim. Case No. 17179-2010-C; and 

¹⁷ Id. at 6.

¹⁸ Id. at 6-8.

¹⁹ Records (Crim. Case No. 17178-2010-C) pp. 173-175.

Under Crim. Case No. 17178-2010-C, the accused is hereby sentenced to suffer the penalty of **IMPRISONMENT OF TWELVE (12) YEARS AND ONE DAY TO TWENTY (20) YEARS** and a fine of **THREE HUNDRED THOUSAND PESOS (PHP300,000.00)**.

In accordance with law, the Branch Clerk of Court shall forward the seized shabu in these cases to the Region IV-A, Philippine Drug Enforcement Agency, Camp Vicente Lim, Canlubang, Calamba City, Laguna for destruction.

Furnish the Philippine Drug Enforcement Agency a copy of the Decision for its information and guidance.

Costs against the accused.²⁰

Aggrieved with the RTC's disposition of the charges against him, accused-appellant assailed the decision before the CA.

The Ruling of the CA

The CA found no merit in the appeal holding that criminal prosecutions involving violations of R.A. No. 9165 depend largely on the credibility of the police officers who conducted the buy-bust operation. It held that, granting that the buy-bust team failed to strictly implement the post-operational requirements as provided in Sec. 21 of the Act, its Implementing Rules and Regulations (*IRR*), however, offers flexibility with regard to the custody and disposition of the confiscated illegal drugs. It ruled that the prosecution had established with certainty that the police officers had complied with the required unbroken chain of custody of the seized items from the accused-appellant, and that the integrity and evidentiary value of the items were preserved. Additionally, accused-appellant failed to show that the buy-bust team was stirred by illicit motive or failed to perform their duty, hence, their testimonies deserve full faith and credit.²¹

With these findings, the CA resolved the appeal as follows:

WHEREFORE, the instant appeal is **DISMISSED**. The *Decision* dated 2 September 2013 of the Regional Trial Court of Calamba City, Branch 36, in Criminal Case Nos. 17178-2010-C and 17179-2010-C is hereby **AFFIRMED**.²²



²⁰ Id. at 175.

²¹ *Rollo*, pp. 8-12.

²² Id. at 12.

ISSUES

I.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FACT THAT THE PROSECUTION FAILED TO ESTABLISH THE EXISTENCE OF THE INVENTORY OF THE SEIZED DRUGS AS REQUIRED UNDER SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FACT THAT THE PROSECUTION FAILED TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS.²³

OUR RULING

The appeal is meritorious.

The linkages in the chain of custody of the seized items were broken; thus, the identity and evidentiary value of the seized items were compromised.

The teaching consistently upheld in our jurisdiction is that in all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established.²⁴ The prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.²⁵ The justification for this declaration is elucidated as follows:

Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.²⁶

²³ CA rollo, pp. 43-44.

²⁴ *People v. Jaafar*, G.R. No. 219829, 18 January 2017.

²⁵ *Belmonte v. People*, G.R. No. 224143, 28 June 2017.

²⁶ *People v. Jaafar*, supra note 23 cited in *People v. Arposeple*, G.R. No. 205787, 22 November 2017.

The chain of custody of the dangerous drugs has been jurisprudentially established as follows: “*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 from the forensic chemist to the court.”²⁷

Sec. 21 of R.A. No. 9165 provides for the meticulous requirement as to the chain of custody of seized drugs and paraphernalia, *viz*:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* -The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

1. The apprehending team having initial custody and control of the 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;
2. Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
3. A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.



²⁷ *People v. Macud*, G.R. No. 219175, 14 December 2017.

The detailed procedure relevant to Sec. 21(a) of R.A. No. 9165 can be found in its IRR, *viz*:

a. The apprehending office/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 noncompliance 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.

a. the first link: the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer

Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. It is the starting point in the custodial link.²⁸ 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, obviating switching, planting, or contamination of evidence.²⁹

While there is no issue that it was PO1 Cruz who placed the markings on the seized items, the relevant question that arises is the determination of the period when these markings were placed considering the obvious conflicting testimony of the prosecution witnesses. PO1 Cruz testified that right after he got hold of the seized items, he immediately placed the markings thereon and it was only thereafter that the barangay officials were called to the scene of the crime to have the incident recorded in the barangay blotter, *viz*:

FISCAL BANATIN:

x x x x

Q. What did you do, Mr. witness after you were able to get hold of Antonio Rueda?



²⁸ *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

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

- A. I immediately handcuffed Antonio Rueda and I was able to get hold again of the buy-bust money from him, sir?
- Q. And what happened after you were able to recover from Antonio Rueda the buy-bust money, Mr. witness?
- A. I immediately put markings on the evidence that I was able to recover from Rueda and immediately went to PO2 Llorente.
- Q. How about the plastic sachet which was brought by your civilian asset, Mr. witness, what happened to that?**
- A. It was given to me and I immediately put markings on it, sir.**
- Q. What are the markings [that] you placed on the plastic sachet which was brought by your civilian asset?**
- A. "AML-RMC," sir.**

x x x x

- Q. After you placed the marking "AML-RMC" [on] the plastic sachet which was bought from Antonio Rueda by your civilian asset, what did you do next, Mr. witness?
- A. After I went to PO2 Llorente, we conducted a preventive search and we were able to recover from Lumagui five (5) plastic sachets.
- Q. Who conducted a preventive search on the person of Allan Lumagui, Mr. witness?
- A. I, sir.
- Q. And you were also the person who was able to recover from Allan Lumagui five (5) pieces of plastic sachets, is that correct?**
- A. Yes, sir.**
- Q. What did you do, Mr. witness, with those plastic sachets?**
- A. I also put markings on those 5 plastic sachets, sir.**
- Q. What were the markings you placed on those 5 plastic sachets recovered from Allan Lumagui?**
- A. "AML-RMC" to "AML-RMC5," sir.**

x x x x

- Q. What happened after you placed the markings on those plastic sachets, Mr. witness?**
- A. We called on the barangay officials of barangay Pansol and have it blotted, sir.**
- Q. And the barangay official of barangay Pansol caused the blotter of the incident, Mr. witness?
- A. Yes, sir.
- Q. How about the plastic sachets which were recovered from both accused, were they included in the blotter, Mr. witness?
- A. Yes, sir.³⁰ (emphases supplied) 

³⁰ TSN, 3 August 2011, pp. 12-15.

On the one hand, PO2 Llorente testified that it was only after the barangay officials were called to the scene of the crime that the seized items were marked, *viz*:

PROS. BANATIN:

Q. What happened, Mr. witness, after you called the barangay officials?

A. In front of the barangay officials, PO1 Cruz put markings and at the same time had it blotted at the barangay blotter, sir.

Q. Did you see PO1 Cruz placing markings on those specimens, Mr. witness?

A. Yes, sir, I have also pictures with me, sir.³¹ (emphasis supplied)

It is worthy to note that, although there was a photograph³² showing accused-appellant, Rueda, and the barangay official with the seized items, the requirement specified in Sec. 21(a)³³ of the IRR of R.A. No. 9165 was not complied with. A reading of the testimony of PO1 Cruz and PO2 Llorente will readily show that the physical inventory envisioned in the IRR was substituted by the police officers with the recording of the incident in the barangay blotter. It must be stressed, however, that this alternate method resorted to by the police officers is not sanctioned by R.A. No. 9165.

It was only during the cross-examination and after he was reminded of the provisions of Sec. 21 of R.A. No. 9165 that PO1 Cruz belatedly claimed that a physical inventory of the seized items was conducted after the buy-bust operation.³⁴ However, no physical evidence was presented and formally offered by the prosecution to prove that the police officers actually undertook an inventory of these items. Indeed, PO1 Cruz's admission that the alleged inventory was not submitted to the prosecutors' office or attached to the records of these cases³⁵ buttresses the logical conclusion that no inventory had taken place.

While it is true that the Court has consistently declared that under varied field conditions, strict compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 may not always be possible, the IRR of R.A. No. 9165, however, has provided that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **noncompliance with the**

³¹ TSN, 7 September 2011, p.5.

³² Records (Crim. Case No. 17178-2010-C) p. 114; Exh. "E."

³³ "The apprehending office/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. x x x"

³⁴ TSN, 3 August 2011, p.24.

³⁵ Id.

requirements of Sec. 21, Art. II of R.A. No. 9165 under justifiable grounds - will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.³⁶ “In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for noncompliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.”³⁷

In this instance, the prosecution failed to elicit from the police officers a single justifiable ground in not complying with the requirement of Sec. 21 of R.A. No. 9165 and its IRR; thus, the Court cannot presume what these grounds are or that they even exist.³⁸

Refuting the claim of PO1 Cruz that he had already placed markings on the seized items before the barangay official was called to the crime scene, is the photograph³⁹ depicting the seized items which do not bear any markings.

Notwithstanding the inconsistent testimony as to when the markings were placed on the seized items, it is significant to state that the photographs⁴⁰ show lighters and other paraphernalia which were never mentioned by PO1 Cruz or PO2 Llorente during their testimony. To stress, PO1 Cruz firmly stated that only the following items were seized after the buy-bust operation: the plastic sachet subject of the sale transaction by the asset with Rueda; the buy-bust money from Rueda; and the five plastic sachets seized from accused-appellant. Corollary thereto, serious doubt lingers on whether a buy-bust operation actually took place in these cases and whether the items presented before the RTC were the very same articles seized during the alleged buy-bust operation.

b. the second link: the turnover of the illegal drug seized by the apprehending officer to the investigating officer

The “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 at each stage, from the time of

³⁶ *People v. Crispo*, G.R. NO. 230065, 14 March 2018.

³⁷ *People v. Ceralde*, G.R. No. 228894, 7 August 2017.

³⁸ *People v. Crispo*, supra note 35.

³⁹ Records (Crim. Case No. 17178-2010-C) p. 114; Exh. “E-1.”

⁴⁰ Id.; Exh. “E” and “E-1.”

seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the 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.”⁴¹

The record is bereft of any showing on who had possession of the seized items from the crime scene to the police station. Likewise, the prosecution did not establish who was in possession of the seized items at the police station before these were endorsed to the laboratory.

c. the third link: the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination

PO1 Cruz claimed that it was PO2 Llorente who brought the seized items to the laboratory⁴² and verified by the stamp on the lower left side of Col. dela Cueva’s request⁴³ for the laboratory examination of the seized items, i.e., “DELIVERED BY PO2 LLORENTE AB.”

A review of the records will again show that the prosecution miserably failed to show how PO2 Llorente came into possession of the seized items prior to their delivery to the laboratory. Moreover, there was no indication whether PO2 Llorente was assigned as the investigating officer in these cases or had the authority to bring the seized items to the laboratory.

d. the fourth link: the turnover and submission of the marked illegal drug from the forensic chemist to the court

In *People v. Pajarin*,⁴⁴ the Court ruled that the chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered with pending trial.

As earlier stated, the testimony of Ong-Rodrigo was dispensed with due to the stipulation between the prosecution and the defense. Carelessly,

⁴¹ Sec. 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

⁴² TSN, 3 August 2011, p.15.

⁴³ Records (Crim. Case No. 17178-2010-C) p. 112; Exh. “B.”

⁴⁴ 654 Phil. 461, 466 (2011).

however, the prosecution's offer for stipulation was limited to the following matters, to wit: her qualification and expertise; the subject matter of her examination which consisted of six heat-sealed plastic sachets; and the authenticity and due execution of chemistry report number D-105-10 dated 25 March 2010.⁴⁵ Undoubtedly, the prosecution failed to offer for stipulation that Ong-Rodrigo took the precautionary steps dictated in *Pajarin* when it dispensed with her testimony. It must be stressed that the Court cannot simply presume that these precautionary steps had been observed by Ong-Rodrigo especially when there is nothing from the records to support such finding.

Conspicuously absent from the offer for stipulation by the prosecution was the identity of the person who delivered the seized items to the RTC. Most importantly, the records were wanting of proof to establish the identity of the person who had temporary custody of the seized item for the purpose of safekeeping from the laboratory until these were brought to the court.

The evidence of the prosecution cannot support the conclusion that there was a legitimate buy-bust operation.

Significantly, an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.⁴⁶ The appeal confers to the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.⁴⁷ While it is an established jurisprudence that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying,⁴⁸ this, however, is not cast in stone. Thus, it was pursuant to this full jurisdiction of the Court that it reviewed the records of these cases and found that it could not sustain the findings of the RTC as there were facts or circumstances of weight and influence which had been overlooked or the significance of which the RTC had misinterpreted.

PO1 Cruz testified that he was about three to five arm-lengths away from the asset at the time of the transaction. PO1 Cruz claimed that it was not possible for Rueda to see him because there was a gate and a tall plant in front of him; although he could vividly see the sale transaction between

⁴⁵ TSN, 23 June 2011, pp. 3-4.

⁴⁶ *Peple v. Crispo*, supra note 35.

⁴⁷ *People v. Lumaya*, G.R. No. 231983, 7 March 2018.

⁴⁸ *People v. Arposeple*, G.R. No. 205787, 22 November 2017.

Rueda and the asset. PO1 Cruz's testimony confirmed that he was not part of the sale transaction but was a back-up, as follows:

ATTY. AGUILA

Q. And you said that you positioned yourself at a distance of roughly three (3) to five (5) arm-lengths from the location of the asset and the subject which in this case is Antonio Rueda, is that correct?

A. Yes, ma'am.

x x x x

Q. So you are trying to impress this Court that you witnessed the transaction?

A. Yes, ma'am.

Q. And that the area was well-lighted?

A. Yes, ma'am.

Q. **So, it is possible also for the accused to see you?**

A. **He will not immediately notice me because there was a gate and a tall plant.**

Q. **So you mean to say in front of you there was a gate and a tall plant which could hamper your vision?**

A. **In between the plant and the gate, I can see the incident, ma'am.**

Q. **But there is a plant between you and the accused and the asset?**

A. **Yes, ma'am.**⁴⁹ (emphasis supplied)

PO2 Llorente, who also witnessed the sale transaction, testified that PO1 Cruz acted as the poseur-buyer during the sale transaction, viz:

PROS. BANATIN:

Q. And how about you Mr. witness, what was your involvement in the operation?

A. I am the security back up of PO1 Richard Cruz, sir.

x x x x

Q. **So what happened Mr. witness, were you able to conduct the operation?**

A. **Yes, sir, the informant together with Sgt. Cruz conducted a buy bust operation and we acted as security for officer Naredo, sir.**

Q. **Who acted as the poseur buyer, Mr. Witness?**

A. **POI Richard Cruz, sir.** 

⁴⁹ TSN, 3 August 2011, pp. 19, 21.

Q. As backup officer, Mr. Witness, how far were you from PO1 Cruz?

A. We were in the middle of the alley, sir, around 6 meters away.

Q. How about the accused in these cases, where were they at that time?

A. They were inside that's why the asset and PO1 Cruz also went inside, [s]ir.

Q. Inside what, Mr. Witness?

A. In an abandoned resort in Pansol, sir.⁵⁰ (emphasis supplied)

Another factor that worked heavily against the claim that a legitimate buy-bust operation took place in these cases was the conflicting testimony as to the pre-arranged signal that the sale transaction had already been consummated. PO1 Cruz stated that as Rueda and accused-appellant were about to enter the resort after the sale transaction, he ran after Rueda while SPO1 Naredo, PO2 Llorente, and Capt. Sarreal went after the accused-appellant.⁵¹ Apparently, the prosecution wanted to impress upon the trial court that because the back-up team was only five meters away from the crime scene and having witnessed the transaction, they went immediately after the accused-appellant when the sale had been consummated. Simply put, there was no pre-arranged signal as far as PO1 Cruz was concerned.

On the one hand, it can be easily gathered from the testimony of PO2 Llorente that the pre-arranged signal that the transaction was already consummated was the call he would receive from PO1 Cruz. Thus, PO2 Llorente claimed that it was only after his receipt of the call from PO1 Cruz that the team proceeded inside the resort to apprehend Rueda and the accused-appellant.⁵² Surely, if his call to PO2 Llorente was the pre-arranged signal, PO1 Cruz could not have forgotten it when he testified.

Accused-appellant was charged with and convicted in Crim. Case 17178-2010-C for violation of Sec. 11,⁵³ Art. II of R.A. No. 9165, the necessary elements of which are as follows: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and

⁵⁰ TSN, 7 September 2011, p. 4.

⁵¹ TSN, 3 August 2011, p. 12.

⁵² TSN, 7 September 2011, p. 5.

⁵³ Sec. 11. *Possession of Dangerous Drugs*. - x x x

- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

consciously possessed the said drug.⁵⁴ In Crim. Case No. 17179-2010-C, the elements that should be proven beyond moral certainty for the attempt or conspiracy under Sec. 26,⁵⁵ Art. II of R.A. No. 9165 for the illegal sale of dangerous drugs are as follows: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.⁵⁶

Although, admittedly, the matters as to who acted as the poseur-buyer and the pre-arranged signals during the buy-bust operation are not elements of violation of Secs. 11 and 26 of R.A. No. 9165, the Court is persuaded to place emphasis on the conflicting testimonies relevant to these matters considering the pervading doubt on whether a legitimate buy-bust operation was conducted by the police officers.

It must be stressed that PO1 Cruz had disclosed that Rueda was the subject of a previous buy-bust operation but he was able to escape. PO1 Cruz knew that a case had been filed against Rueda before the RTC, Calamba, and that trial thereon was still ongoing.⁵⁷ It bewilders therefore, that despite PO1 Cruz's knowledge of the whereabouts of Rueda, he did not secure a warrant for his arrest and instead proceeded with the conduct of a buy-bust operation.

The uncertainty as to whether a legitimate buy-bust operation took place in these cases coupled with the glaring truth that each of the linkages in the chain of custody was broken, put too much strain on the claims of the prosecution that accused-appellant was in possession of the items allegedly seized from him in Crim. Case 17178-2010-C, and that he conspired with Rueda to sell prohibited drugs in Crim. Case 17179-2010-C. Worse, with the broken chain of custody, the identity and the evidentiary value of the items allegedly seized from the accused-appellant had been seriously compromised.



⁵⁴ *People v. Lumaya*, supra note 47.

⁵⁵ Sec. 26. *Attempt or Conspiracy*. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

⁵⁶ *People v. Lumaya*, supra note 47.

⁵⁷ TSN, 3 August 2011, p.18.

The presumption of regularity in the performance of duty cannot prevail over the constitutional right of the accused to be presumed innocent.

Much emphasis was given by the RTC and the CA on the presumption of regularity in the performance of duty by the police officers in striking down accused-appellant's defense of denial and frame-up.

The presumption of innocence of an accused is a fundamental constitutional right that should be upheld at all times, viz:

2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided, that he has been duly notified and his failure to appear is unjustifiable.

In consonance with this constitutional provision, the burden of proof rests upon the prosecution and the accused must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor.⁵⁸ Concomitant thereto, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.⁵⁹ Rule 133, Sec. 2 of the Revised Rules on Evidence specifically provides that the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof that excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

The fact is underscored that the records of these cases are replete with proof showing the serious lapses committed by the police officers. "Serious uncertainty is generated on the identity of the *shabu* in view of the broken linkages in the chain of custody; thus, the presumption of regularity in the performance of official duty accorded to the apprehending officers by the courts below cannot arise."⁶⁰ Even granting that the defense presented by accused-appellant was inherently weak or that the record is bereft of any showing that there was ill motive on the part of the police officers in their conduct of the alleged buy-bust operation, these matters cannot outweigh the

⁵⁸ *People v. Arposeple*, G.R. No. 205787, 22 November 2017.

⁵⁹ *People v. Santos*, G.R. No. 223142, 17 January 2018.

⁶⁰ *People v. Gayoso*, supra note 27.

right of the accused to be presumed innocent, of which great premium is accorded by the fundamental law.

WHEREFORE, the appeal is **GRANTED**. The Decision dated 24 April 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06423 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Allan Lumagui y Maligid is **ACQUITTED** of the crimes charged. He is ordered **IMMEDIATELY RELEASED** from detention unless he is otherwise legally detained for another cause.

Let a copy of this Decision be sent to the Superintendent of the New Bilibid Prisons for immediate implementation. The New Bilibid Prison Superintendent is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

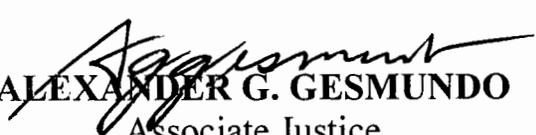

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

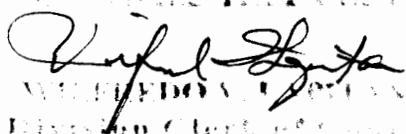
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court's Division.


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 this Court's Division.


ANTONIO T. CARPIO
Acting Chief Justice


WILFREDO S. LOPEZ
Division Clerk of Court
Third Division

AUG 13 2018