



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 26, 2020 which reads as follows:*

**“G.R. No. 246418 – PEOPLE OF THE PHILIPPINES vs. LIZA IGPUARA y FERNANDEZ**

This appeal assails the Decision<sup>1</sup> dated April 24, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09382 affirming appellant Liza Igpura y Fernandez’s conviction for violations of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165).

**The Facts and the Plea:**

In two (2) separate Informations dated April 28, 2016, appellant was charged with violations of Sections 5 and 11 of RA 9165, viz.:

**Criminal Case No. 21182-D**

On or about April 22, 2016, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO3 Romeo D. Dejumo, Jr., a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.15 gram of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>2</sup>

**Criminal Case No. 21183-D**

- over – sixteen (16) pages ...

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<sup>1</sup> Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justice Jane Aurora C. Lantion and Associate Justice Zenaida T. Galapate-Laguilles, all members of the Second Division, *rollo*, pp. 3-18.

<sup>2</sup> Record, p. 1.

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On or about April 22, 2016, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully, and feloniously have in her possession, custody and control five (5) heat-sealed transparent plastic sachets containing 0.12 gram, 0.09 gram, 0.15 gram, 0.10 gram, 0.15 gram, respectively of white crystalline substance, which were found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>3</sup>

On arraignment, appellant pleaded “not guilty” to both charges. Joint trial ensued.

### ***The Prosecution’s Evidence***

**PO3 Romeo D. Dejumo, Jr.** testified that around 5 o’clock in the afternoon of April 22, 2016, a personnel from the Anti- Drug Council of Pasig City, together with a confidential agent arrived at the Station Anti-Illegal Drugs – Special Operations Task Group (SAID-SOTG) Pasig City Police Station. The confidential agent informed Police Chief Inspector Castillo that a certain Liza Igpuara was trading drugs at Callejon 2, Barangay Sta. Cruz, Pasig City.<sup>4</sup> PCI Castillo instructed that he (PO2 Dejumo, Jr.) and the confidential informant proceed to the area and verify the information. There, the confidential informant pointed to a person whom the former identified as Liza Igpuara, herein appellant. She was standing at the corner of a store when two (2) male persons carrying a sack approached her.<sup>5</sup> One of them handed money to appellant, who in turn, gave a small plastic sachet to the man.<sup>6</sup> It took them thirty (30) to forty-five (45) minutes<sup>7</sup> to conduct the surveillance, after which, they returned to the police station.<sup>8</sup> He reported the results of their surveillance in preparation for a buy-bust operation. PCI Castillo also coordinated with the Philippine Drug Enforcement Agency (PDEA). PO1 Gilbys Balauitan prepared the Coordination Sheet and Pre-Operation Report<sup>9</sup> and delivered them to the PDEA in Barangay Pinyahan, Quezon, City.<sup>10</sup> A buy-bust team was formed with PO3 Allan Caponga as team leader and he (PO3 Dejumo, Jr.) as poseur-buyer.<sup>11</sup> The other members of

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> TSN dated August 17, 2016, pp. 3-4.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 8.

<sup>11</sup> TSN dated August 24, 2016, p. 6.



the team were PO1 Jasmin Gallano, PO2 Marvin Santos, PO2 Ryan Mangat and PO2 Michael Palattao.<sup>12</sup> PCI Castillo provided him two (2) one hundred (100) peso bills marked money, with his initials "RD." The team agreed on pre-arranged signal, *i.e.* he will light his cigarette once the sale got consummated. At 10 o'clock in the evening of April 22, 2016, they proceeded to the area of operation together with the confidential agent.<sup>13</sup>

At the target area, he and the confidential agent proceeded to appellant's house. After the introduction, the confidential agent told appellant he (PO3 Dejumo, Jr.) would like to buy "*dos*." He handed the two (2) one hundred (Php100.00) peso marked bills to appellant<sup>14</sup> who slid them inside her pocket.<sup>15</sup> Appellant then drew from her pocket, a dark brown coin purse<sup>16</sup> and took out a plastic sachet containing white crystalline substance.<sup>17</sup> He lighted the cigarette to signal that the sale had been consummated.<sup>18</sup>

As the other operatives closed in, he introduced himself to appellant as a police officer and thereupon, arrested her.<sup>19</sup> He immediately confiscated from appellant, the dark brown coin purse containing five (5) other plastic sachets with white crystalline substance<sup>20</sup> and informed appellant of her offenses.<sup>21</sup> He slid the dark brown coin purse into his left pocket while the one sachet he bought from appellant, into his right pocket.<sup>22</sup> When asked for the buy-bust money, appellant took it from her pocket and turned it over to him (PO3 Dejumo, Jr.).<sup>23</sup>

Team Leader PO3 Allan Caponga summoned a barangay elected official and media representative.<sup>24</sup> They waited thirty (30) to forty-five (45) minutes for these witnesses to arrive.<sup>25</sup> Arlene Rivera of People's Tonight, however, informed PO3 Caponga she will not be able to make it while the barangay official did not arrive.<sup>26</sup> The

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<sup>12</sup> TSN dated August 17, 2016, p. 12.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 13.

<sup>15</sup> *Id.* at 14.

<sup>16</sup> TSN dated August 24, 2016, p. 3.

<sup>17</sup> TSN dated August 17, 2016, p. 13.

<sup>18</sup> TSN dated August 24, 2016, p. 3.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 6.

apprehending officers did not call the Department of Justice (DOJ) as it was already 10 o'clock in the evening.<sup>27</sup> Meantime, he marked and signed the seized items at the place of arrest. The plastic sachet bought from appellant was marked 1RD/LISA/04-22-16 while the five (5) other sachets found inside the dark brown coin purse were respectively marked 2RD/LISA/04-22-16, 3RD/LISA/04-22-16, 4RD/LISA/04-22-16, 5RD/LISA/04-22-16, and 6RD/LISA/04-22-16, and signed. The dark brown coin purse was marked RD/LISA/04-22-16.<sup>28</sup> Thereafter, they proceeded to the SAID station.<sup>29</sup> He was in possession of the seized items which he slid into his pocket all the way. He remained in possession of the seized items until they reached the police station.<sup>30</sup>

There, barangay kagawad Randy C. Cruz from San Jose came and saw the seized items. He prepared the inventory of seized evidence<sup>31</sup> while PO2 Gilbys Balautan took pictures.<sup>32</sup> Only his signature and that of kagawad Randy C. Cruz appeared on the inventory.<sup>33</sup> He deemed it proper not to ask appellant to sign the same because she was not assisted by a lawyer.<sup>34</sup>

Investigator SPO2 Edward Maylas prepared the request for laboratory examination, request for drug test, and chain of custody form.<sup>35</sup> He delivered the chain of custody form<sup>36</sup> together with the seized items in his possession (inside his pocket) to Camp Crame<sup>37</sup> where the items were received by PCI Sandra D. Go.<sup>38</sup>

When **PCI Sandra D. Go** was called to testify, the parties agreed on her proposed testimony, specifically: (1) She received a Request for Laboratory Examination together with the specimens described in the said request; (2) She immediately conducted physical, chemical and confirmatory tests on the specimens to determine the presence of dangerous drugs and reduced her findings per Chemistry Report No. D-204-16; (3) After taking samples from the specimens, the witness resealed with masking tape and affixed her markings and signature thereon. The qualitative examination she did on the seized

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<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 8-9.

<sup>29</sup> *Id.* at 14.

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.*

<sup>32</sup> TSN dated August 31, 2016, p. 4.

<sup>33</sup> TSN dated August 24, 2016, p. 16.

<sup>34</sup> *Id.* at 17.

<sup>35</sup> TSN dated August 31, 2016, p. 6.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Id.* at 9.



items yielded positive for methamphetamine hydrochloride, a dangerous drug.

The prosecution formally offered the following evidence:<sup>39</sup> *Sinumpaang Salaysay ng Pag-Aresto* of PO3 Romeo D. Dejum, Jr., and its submarkings (Exhibit A); inventory of seized evidence and its submarkings (Exhibit B); chain of custody form and its submarkings (Exhibit C); Pasig City Police SAID-SOTG's copy of request for laboratory examination and its submarkings (Exhibit D); initial laboratory report/Chemistry Report No. D204-16 (Exhibit E); request for drug test (Exhibit F); initial laboratory report/Chemistry Report DT-336-16 (Exhibit G); machine copy of a one hundred-peso bill with serial number TL265200 and its submarkings (Exhibit H); machine copy of a one hundred-peso bill with serial number VE016550 (Exhibit I); photographs depicting the signing of the inventory of seized evidence (Exhibits J and J-1); photograph depicting the sachets of *shabu* bought and confiscated from the appellant including the coin purse (Exhibit K); photograph depicting the buy-bust money (Exhibit L); pre-operation report and its submarkings (Exhibit M); coordination sheet and its submarkings (Exhibit N); Camp Crame Crime Laboratory's copy of the request for laboratory examination (Exhibit O); Chemistry Report No. D-20416 and its submarkings (Exhibit P); impoverished plastic sachet container provided by the forensic chemist where Exhibits R to W were stored and kept (Exhibit Q); transparent plastic sachet containing white crystalline substance bearing the markings 1RD/LISA/04-22-16 and its submarkings (Exhibit R); transparent plastic sachet containing white crystalline substance bearing the markings 2RD/LISA/04-22-16 and its submarkings (Exhibit S); transparent plastic sachet containing white crystalline substance bearing the markings 3RD/LISA/04-22-16 and its submarkings (Exhibit T); transparent plastic sachet containing white crystalline substance bearing the markings 4RD/LISA/04-22-16 and its submarkings (Exhibit U); transparent plastic sachet containing white crystalline substance bearing the markings 5RD/LISA/04-22-16 and its submarkings (Exhibit V); transparent plastic sachet containing white crystalline substance bearing the markings 6RD/LISA/04-22-16 and its submarkings (Exhibit W); and a coin purse with markings (RD/LISA/04-22-16) and signature (Exhibit X).

### ***The Defense's Evidence***

Appellant **Liza F. Igpura** testified that in the afternoon of April 22, 2016, she was at home with her mother (Patricia Z. Igpura),

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<sup>39</sup> Per Order dated September 7, 2016; record, pp. 68-69.

father, and nephew sorting out the scraps (used papers) they bought. At 3 o'clock in the afternoon, she went out to look for one *Mang Roger* to drive them to Mandaluyong City where they would deliver the scraps.<sup>40</sup> At 4 o'clock in the afternoon, *Mang Roger* arrived. They reached Mandaluyong City by 5:10 in the afternoon but the junkshop was already closed. They returned to Pasig City by 7 o'clock in the evening and waited for the junkshop owner there until 9 o'clock in the evening. Around 9:30 in the evening, they were back in their house.<sup>41</sup> But, she had to go out again to buy bread and coffee. Outside, she was suddenly arrested by two (2) men wearing a jacket and a face mask.<sup>42</sup> They forced her to empty her pockets, which she did. She surrendered to them coins worth thirty five (Php35.00) pesos, a twin pack coffee, and bread.<sup>43</sup>

She was totally clueless on why she got arrested. At the police station, she was forced to divulge the name of a muslim person.<sup>44</sup> She also saw the six (6) sachets of *shabu* in the possession of PO3 Dejumio, Jr. who pulled them out from a brown wallet.<sup>45</sup> She did not own nor possess the coin purse which she saw for the first time at the police station.<sup>46</sup>

Appellant's mother, **Patricia Z. Igpuaara**,<sup>47</sup> and appellant's 11 year old nephew **Ken Fernandez Garcia**<sup>48</sup> corroborated appellant's testimony. They principally testified that they were with appellant in the afternoon of April 22, 2016 until 9:30 in the evening.

**The Trial Court's Ruling:** By Decision dated February 1, 2017,<sup>49</sup> the trial court rendered a verdict of conviction, *viz.*:

**WHEREFORE:**

1. In Criminal Case No. 21182-D, the Court finds accused Liza F. Igpuaara **GUILTY** beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby imposed upon her the penalty of **life imprisonment and a fine of five hundred thousand pesos (P500,000.00) with all the accessory penalties under the law.**

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<sup>40</sup> TSN dated September 14, 2016, p. 3.

<sup>41</sup> *Id.* at 6.

<sup>42</sup> TSN dated September 21, 2016, p. 3.

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 5.

<sup>46</sup> *Id.* at 6.

<sup>47</sup> TSN dated October 5, 2016, pp. 1-8.

<sup>48</sup> TSN dated October 19, 2016, pp. 1-9.

<sup>49</sup> Record, pp. 89-97.



2. In Criminal Case No. 21183-D, the Court finds accused Liza F. Iguara **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposed upon her an indeterminate penalty of imprisonment **from twelve (12) years and one (1) day, as minimum, to sixteen (16) years a[s] maximum, and a fine of three hundred thousand pesos (P300,000.00) with all the accessory penalties under the law.**

The six (6) transparent plastic sachets of *shabu* subject matter of the instant cases are hereby ordered confiscated, and the Branch Clerk of this Court is directed to turn over the said evidence to the Philippine Drug Enforcement Agency for destruction in accordance with law.

**SO ORDERED.**<sup>50</sup>

The trial court gave credence to PO3 Dejumo, Jr.'s testimony. It also found that the chain of custody was substantially complied with. More, the seized items yielded positive results for methamphetamine hydrochloride or *shabu*. On the other hand, appellant's theory of denial was rejected. The testimonies of appellant's mother and nephew were not given any credence since they allegedly lacked personal knowledge on the circumstances surrounding appellant's arrest.

**The Proceedings before the Court of Appeals:** On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the supposed failure of the prosecution to prove her guilt beyond reasonable doubt.

Appellant essentially asserted:

The trial court should have given credence to the testimonies of the defense witnesses considering that they and appellant were together in the afternoon of April 22, 2016 until 9:30 in the evening, shortly before the alleged buy-bust operation took place. Too, numerous irreconcilable inconsistencies in PO3 Dejumo, Jr.'s testimony were brushed aside by the trial court, which if given attention, would alter the verdict of conviction.

On the chain of custody, the apprehending officers violated Section 21 of RA 9165 when they conducted the inventory without the presence of representatives from the media and the DOJ. The apprehending officers likewise violated Section 86(a) of the implementing rules and regulations of RA 9165 when they did not

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<sup>50</sup> *Id.* at 97.

submit post-operation and progress reports to the PDEA. There is doubt on the seized items' genuineness and authenticity when PO3 Dejumo, Jr. kept the buy-bust money and the coin purse personally instead of surrendering the same to the evidence custodian. Lastly, the trial court failed to appreciate the import of appellant's testimony when the police officers forced her to divulge the name of a muslim person. Certainly, the police officers were then engaged in the so-called "*palit ulo*" where the police officers would free an arrested person if he or she named another person in his or her stead.<sup>51</sup>

On the other hand, the Office of the Solicitor General (OSG) through State Solicitor Jonathan Honorato D. Lock defended the verdict of conviction. According to the OSG, the trial court correctly ruled that the prosecution sufficiently established all the elements of illegal sale and possession of dangerous drugs. The inconsistencies pointed out by appellant were trivial in nature which did not negate that fact that she was caught red-handed selling and in possession of illegal drugs. Too, the apprehending officers substantially complied with the chain of custody rule when they exerted earnest efforts to comply with the three (3) witness rule under Section 21 of RA 9165. In fact, the apprehending officers waited for thirty (30) to forty-five (45) minutes but no representatives from the barangay and the media arrived. Finally, coordination with the PDEA is not an indispensable requirement in buy bust operation.<sup>52</sup>

**The Court of Appeals' Ruling:** By its assailed Decision<sup>53</sup> dated April 24, 2018, the Court of Appeals affirmed. It ruled that the elements of illegal sale and illegal possession were clearly established by the prosecution. The inconsistencies pointed out by appellant did not render PO3 Dejumo, Jr.'s testimony incredible. On the chain of custody, it held that the absence of a barangay official and a media representative was not fatal, there being proof that the apprehending officers did try to call for these witnesses who, nonetheless, failed to come. Despite the absence of some of the required witnesses, the integrity and evidentiary value of the seized items were duly preserved. Lastly, the absence of a post-report or progress report to the PDEA did not invalidate the buy-bust operation.

### **The Present Appeal**

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<sup>51</sup> CA rollo, pp. 22-47.

<sup>52</sup> *Id.* at 82-100.

<sup>53</sup> Rollo, pp. 3-18.



Appellant now seeks affirmative relief from the Court and prays anew for her acquittal. In compliance with Resolution dated June 26, 2019,<sup>54</sup> both appellant<sup>55</sup> and the OSG<sup>56</sup> manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

### Issue

Did the Court of Appeals err in affirming the verdict of conviction against appellant for illegal sale and possession of drugs?

### Ruling

We acquit.

In the prosecution of illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and, (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. On the other hand, in illegal possession of dangerous drugs, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. The evidence of the *corpus delicti* must be established beyond reasonable doubt.<sup>57</sup>

The narcotic substance itself constitutes the *corpus delicti* of the offense. The fact of its existence is vital to sustain a conviction beyond reasonable doubt. Too, the identity of the dangerous drug must be established beyond reasonable doubt, 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. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.<sup>58</sup> Failure to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.<sup>59</sup>

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<sup>54</sup> *Id.* at 24.

<sup>55</sup> *Id.* at 31-33.

<sup>56</sup> *Id.* at 27-28.

<sup>57</sup> See *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019.

<sup>58</sup> See *People v. Obmiranis*, 594 Phil. 561, 570 (2008).

<sup>59</sup> See *People v. Flores*, G.R. No. 241261, July 29, 2019.

The Informations here alleged that the crime charged was committed on April 22, 2016. The governing law, therefore, is RA 9165, as amended by RA 10640.<sup>60</sup> Section 21(1) provides:

**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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA 9165, defines chain of custody as follows:

"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

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<sup>60</sup> 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," July 15, 2014.



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.

In *People v. Ubungen*,<sup>61</sup> the Court enumerated the following links that should be established in the chain of custody of the confiscated drug item:

*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.

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for **each link** of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>62</sup>

Here, we focus on the first link.

*The seized items were marked without the presence of the required insulating witnesses.*

The marking of the seized items here was done without the presence of any of the required witnesses under RA 9165 as amended by RA 10640. Section A.1.5 of the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640 provides:

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, *with elected public official and a representative of the National Prosecution Service (NPS) or the media*, who shall be required to sign the copies of the

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<sup>61</sup> G.R. No. 225497, July 23, 2018.

<sup>62</sup> See *Duarte y Oliveros v. People*, G.R. No. 238971, August 28, 2019.

inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer. (*Emphasis supplied*)

On this score, PO3 Dejummo, Jr. testified:

**Q:** And after that, what happened next?

**A:** Our team leader summoned a barangay elected official of Barangay Sta. Cruz in order to witness the inventory and he also summoned a representative from the media, ma'am.

**Q:** Who is your team leader?

**A:** PO3 Allan Caponga, ma'am.

**Q:** And what happened to that summon, Mr. Witness, if you know?

**A:** The representative of the media, Arlene Rivera of People's Tonight, called to inform us that she will not be able to make it and then the barangay elected official of Brgy. Sta. Cruz did not arrive.

**Q:** How did you know that Arlene from the media would not make it, how did you know that?

**A:** Our team leader, PO3 Allan Caponga, informed me, ma'am.<sup>63</sup>

xxx    xxx    xxx

**Q:** Was there any representative from the DOJ?

**A:** No representative from the DOJ, ma'am. We didn't call because it was already 10:00 in the evening.<sup>64</sup>

The arresting officers failed to give any explanation why they did not coordinate earlier with an elected public official and a representative from the DOJ or the media to ensure their presence. They did the surveillance around 5:30 in the afternoon of April 22, 2016 and the buy-bust operation around 9:30 in the evening. They had a window of at least four (4) hours to ensure the presence of an elected official and a representative from the DOJ or the media.

As it was, however, the arresting officers waited until after appellant got arrested before they purportedly tried to contact a media representative who said she could not come. There was no showing that they even contacted another media representative to witness the marking, inventory, and photographing. As for the DOJ representative, they did not bother at all to even try calling one because it was already 10 o'clock in the evening. The Court, however, takes judicial notice of the skeletal force of DOJ prosecutors assigned

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<sup>63</sup> TSN, August 24, 2016, p. 6.

<sup>64</sup> *Id.* at 7.



in different cities and municipalities beyond regular office hours. With respect to the elective official, although they claimed to have called a barangay official to witness the marking, inventory, and photographing, the latter allegedly failed to come. But who was he, there was no mention. Even then, one barangay kagawad Randy C. Cruz came much later after the marking was already accomplished. He had nothing more to witness. His belated presence does not cure the incipient absence of any of the three (3) insulating witnesses during the marking, inventory and photographing.

In *People v. Umipang*,<sup>65</sup> appellant therein was charged with violations of Sections 5 and 11 of RA 9165. But the SAID-SOTF did not adduce any justifiable reason for failing to secure the presence of the required witnesses — especially considering it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest. Thus, the Court ruled that there was no genuine and sufficient effort on the part of the arresting officers to look for the said representatives pursuant to Section 21(1) of RA 9165. A sheer statement that the representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives — was a flimsy excuse. For this unjustifiable deviation from the chain of custody rule, the Court rendered a verdict of acquittal.

Here, the insulating presence of the required witnesses would have preserved an unbroken chain of custody. But due to the arresting officers' failure to secure through earnest efforts the presence of these witnesses, an unjustified gap was created in the chain of custody.

***The seized items were not  
properly secured after  
confiscation.***

After the marking, the seized items should be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.<sup>66</sup> This is to ensure that the item is secured from tampering, especially when the seized item is miniscule that it becomes susceptible to alteration or damage.<sup>67</sup> Notably, the subject of the illegal sale here

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<sup>65</sup> G.R. No. 190321, April 25, 2012, 686 Phil. 1024, 1052 (2012).

<sup>66</sup> See *People v. Sanchez*, 590 Phil. 214, 242 (2008).

<sup>67</sup> See *Ramos v. People*, G.R. No. 227336, February 26, 2018, 856 SCRA 459, 481-482.

weighed 0.15 gram while the five (5) other items found under appellant's possession inside the dark brown coin purse weighed 0.12 gram, 0.09 gram, 0.15 gram, 0.10 gram, 0.15 gram respectively. But PO3 Dejumio, Jr. admitted he merely placed the seized items inside his left and right pockets, *viz.*:

**Q:** What did you do with that brown purse containing five more sachets?

**A:** I put the coin purse in my left pocket, ma'am.

**Q:** What about the one piece of transparent plastic sachet with white crystalline substance that you were able to buy from alias Lisa?

**A:** I put it in my right pocket, ma'am.<sup>68</sup>

xxx    xxx    xxx

PROS. MADAMBA

**Q:** After marking the evidence, what happened next, Mr. Witness?

**A:** Since the barangay elected official and the media representative that we summoned did not arrive, the team decided to proceed to the office of SAID, ma'am.

**Q:** Who was in possession of the items that you confiscated from alias Lisa and the one piece heat-sealed transparent plastic sachet that you were able to buy from alias Lisa and the coin purse from the place of arrest to your office?

**A:** In my possession, ma'am.

**Q:** How were you able to keep that in your possession?

**A:** I placed it in my pocket, ma'am.<sup>69</sup>

xxx    xxx    xxx

In **Ramos v. People**,<sup>70</sup> the seized items were only placed in one of the arresting officer's pocket while they were on their way to the police station. Several sachets of suspected drugs with small amounts, particularly 1.78 grams, 1.17 grams, 1.06 grams, 1.29 grams, 1.00 gram, 1.54 grams and 1.01 grams were allegedly confiscated from the accused. It was only when the arresting officers reached the police station that the seized drugs were belatedly placed in a SAID-SAOTG evidence bag. Thus, the Court acquitted appellant for failure of the apprehending officers to properly secure the seized items.

Verily, the presumption of regularity in the performance of official duty on the part of the apprehending police officers does not

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<sup>68</sup> TSN dated August 24, 2016, p. 5.

<sup>69</sup> *Id.* at 14-15.

<sup>70</sup> *Supra* note 65.



find application here. It cannot be used as basis for affirming appellant's conviction because, *first*, the presumption is precisely just that — a mere presumption. Once challenged, as in this case, it cannot be regarded as binding truth. *Second*, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.<sup>71</sup> In our constitutional system, the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.<sup>72</sup>

Considering the lapses committed and the unjustified deviation to the chain of custody rule by the apprehending police officers, there is doubt on the integrity and identity of the *corpus delicti* of the seized items. Thus, the prosecution failed to prove appellant's guilt beyond reasonable doubt. Appellant's acquittal, therefore, is in order.

**WHEREFORE**, the appeal is **GRANTED** and the Decision dated April 24, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09382, **REVERSED** and **SET ASIDE**.

Appellant Liza Igpuara y Fernandez is **ACQUITTED** of violations of Sections 5 and 11, Article II of Republic Act No. 9165 as amended by Republic Act No. 10640. The Court **DIRECTS** the Superintendent of the Correctional Institution for Women, Mandaluyong City to cause the immediate release of Liza Igpuara y Fernandez from custody unless she is being held for some other lawful cause, and to submit her report on the action taken within five (5) days from notice.

Let the corresponding entry of final judgment be immediately issued.

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<sup>71</sup> See *People v. Ambrosio*, 471 Phil. 241, 250 (2004), citing *People v. Tan*, 432 Phil. 171, 197 (2002).

<sup>72</sup> See *Mallillin v. People*, 576 Phil. 576, 593 (2008).

**SO ORDERED.”** *Reyes, J., Jr., J., on official leave.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
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Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 09382)

The Hon. Presiding Judge  
Regional Trial Court, Branch 164  
1600 Pasig City  
(Crim. Case Nos. 21182-D & 21183-D)

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