Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

PABLO ARPOSEPLE y SANCHEZ and JHUNREL SULOGAOL y DATU,
Accused-Appellants.

G.R. No. 205787

Present:

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

Promulgated:

November 22, 2017

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DECISION

MARTIRES, *J.*:

This resolves the appeal of Pablo Arposeple y Sanchez (*Arposeple*) and Jhunrel Sulogaol y Datu[1] *(Sulogaol)* from the 3 October 2011 Decision[2] of the Court of Appeals *(CA),* in CA G.R. CR-HC No. 00865 which affirmed, but with modification as to the fine imposed in Criminal Case No. 12853, the 20 November 2007 Omnibus Decision[3] of the Regional Trial Court *(RTC)* in Criminal Case Nos. 12852 to 12854.

THE FACTS

Arposeple and Sulogaol were both charged with three counts of violation of certain provisions of R.A. No. 9165 before the RTC of Tagbilaran City, Bohol, viz:

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1 Variably referred as "Jhunrel Sulogaol y Dato" in some parts of the rollo.

2 *Rollo*, pp. 3-16. Penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Ramon Paul. L. Hernando and Victoria Isabel A. Paredes.

3 Records (Crim. Case No. 12852), pp. 155-164.

CRIM. CASE NO. 12852
(Viol. of Sec. 5, Art. II, R.A. 9165)

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously, and knowingly, without any legal purpose, sell, transfer, deliver and give away One (1) transparent cellophane sachet containing small amount of white powdered substance commonly known as shabu powder which could no longer be measured in terms of weight, but could not be more than 0.01 gram, for and in consideration of the amount of Five Hundred Pesos (₱500.00) Philippine currency, the accused knowing fully well that the above-mentioned substance which contains METHAMPHETAMINE HYDROCHLORIDE is a dangerous drug and that they did not have any lawful authority, permit or license to sell the same, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. 6425, as amended. [4]

CRIM. CASE NO. 12853
(Viol. of Sec. 11, Art. II, R.A. 9165)

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously, and knowingly have in their possession, custody, and control two (2) pcs. empty transparent cellophane sachets containing suspected shabu leftover which could no longer be measured in terms of weight, but could not be more than 0.01 gram, the accused knowing fully well that the above-mentioned substance which contains Methamphetamine Hydrochloride is a dangerous drug and that they did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section 11, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. 6425, as amended.[5]

CRIM. CASE NO. 12854
(Viol. of Sec. 12, Art. II, R.A. 9165)

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously and knowingly have in their possession, custody and control to wit: two (2) pcs. rolled aluminum foil used as tooter; two (2) pcs. folded aluminum foil; two (2) pcs. disposable lighters; one (1) pc. bamboo clip; and one (1) pc. half blade, the accused knowing fully well that the above-mentioned items are the instruments, apparatus or paraphernalia fit or

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4 Records (Crim. Case No. 12852), pp. 1-2.
5 Records (Crim. Case No. 12853), pp. 1-2.

> intended for smoking, consuming, administering, injecting, ingesting or introducing dangerous drug into the body, and that he did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.
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> Acts committed contrary to the provisions of Section 12, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. No. 6425, as amended.[6]

When arraigned, both appellants pleaded not guilty; thus, the consolidated trial of these cases took place.

The Version of the Prosecution

To prove its cases, the prosecution presented the testimonies of the following: Police Superintendent *(P/Supt.)* Victoria C. de Guzman *(De Guzman),* Police Officer 2 *(PO2)* Jay E. Ramos (*Ramos*), Police Officer I *(PO1)* Earl U. Tabuelog *(Tabuelog),* Police Inspector *(P/Insp.)* Miguel Jimenez *(Jimenez),* and Barangay Kagawad Mary Jane Ruiz *(Ruiz).*

At around 3:00 a.m. on 21 September 2005, Jimenez, who was the Assistant City Drug Enforcement Officer, held a briefing at his office on a buy-bust operation to be carried out at Ubujan District, Tagbilaran City. The briefing, with the appellants as the subjects of the buy-bust operation, was attended by the buy-bust team *(team)* composed of PO3 Rolando Bagotchay *(Bagotchay),* PO3 Jonathan Bañocia, PO3 Rodante Sanchez, PO3 Norman Brunidor *(Brunidor),* PO2 Jay Tizon, Ramos, Tabuelog, PO2 Ruben Baculi, who was the representative of the Criminal Investigation and Detection Group, and the informant. Jimenez gave ₱500.00[7] to Ramos, the poseur-buyer, while Bagotchay would be the recorder and property custodian. Jimenez instructed Ramos to take off his cap as the pre-arranged signal that the transaction had been consummated.[8]

After the briefing, the team proceeded to their designated area, i.e., the Monastery of the Holy Spirit *(monastery)* located at CPG North Avenue, Ubujan District, Tagbilaran City. Ramos and the informant proceeded in front of the monastery while the rest of the team positioned themselves at the nearby GH Motors.[9]

Ramos instructed the asset to inform the appellants that he had a friend who wanted to buy shabu. After the asset returned from a house in front of the monastery, the appellants arrived. The asset introduced Ramos to the appellants who at first were hesitant to sell him shabu. Sulogaol told

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6 Records (Crim. Case No. 12854), pp. 1-2.
7 Exh. "N." (TSN, 6 June 2006), p. 7.
8 TSN, 6 June 2006, pp. 5-8 and 10.
9 Id. at 8-9.

Arposeple, "Ato lang ni hatagan bay,"[10] to which the latter replied "sige hatagan na lang nato."[11] With the agreement to sell shabu, Ramos gave the ₱500.00 marked money to Arposeple, while Sulogaol took one transparent sachet from his pocket and handed this to Arposeple who in turn gave it to Ramos. With the sale consummated, Ramos took off his cap but, as the team approached, the appellants ran in opposite directions.[12]

Ramos chased Arposeple until they reached a house fronting the monastery. Ramos got hold of Arposeple's shirt but as they grappled they found themselves inside the house. With the aid of Brunidor and Bagotchay, Ramos was able to handcuff Arposeple. A body search on Arposeple yielded a playing card case[13] containing the following: one piece sachet with suspected shabu leftover;[14] a hundred peso bill;[15] two pieces empty transparent cellophane sachets containing suspected shabu leftover;[16] two pieces of aluminum foil used as tooters; [17] two pieces folded aluminum foil;[18] two pieces disposable lighters;[19] one piece bamboo clip;[20] and one piece half-blade.[21] The marked five-hundred-peso[22] bill was found in Arposeple's left pocket. Ramos informed Arposeple of his constitutional rights.[23]

Tabuelog caught Sulogaol after a brief chase. The body search on Sulogaol yielded negative. Tabuelog likewise informed Sulogaol of his constitutional rights.[24]

Ramos turned over the seized items to Bagotchay who filled out the certificate of inventory.[25] The inventory was witnessed by the appellants and by Barangay Kagawads Ruiz and Felixia Ligue, and Zacarias Castro and Willy Maestrado, who acted as representatives of the Department of Justice *(DOJ)* and the media, respectively.[26] Except for the appellants who refused to sign the certificate of inventory, the other witnesses did.[27]

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10 Records (Crim. Case No. 12852), p. 158; English translation: "Let us just give him Bay."
11 Id.; English translation: "Ok, let us just give."
12 TSN, 9 May 2006, pp. 12-15.
13 Exh. "L."
14 Exh. "M."
15 Exh. "O."
16 Exhs. "P" and "P-1."
17 Exhs. "Q" and "Q-1."
18 Exhs. "R" and "R-1."
19 Exh. "S."
20 Exh. "T."
21 Exh. "U."
22 Exh. "N."
23 TSN, 9 May 2006, pp.15-29.
24 TSN, 25 May 2006, pp. 14-16.
25 Record of Documentary Evidence, p. 5; Exh. "C."
26 TSN, 9 May 2006, pp. 30-31.
27 TSN, 4 July 2006, p. 16.

The appellants were brought to the Tagbilaran Police Station for proper disposition[28] while Ramos and Tabuelog executed their respective affidavits[29] in relation to what had happened during the buy-bust operation.[30]

At 3:05 p.m. on the same day, the Philippine Provincial Crime Laboratory Office of Camp Francisco Dagohoy, Tagbilaran City *(laboratory),* received a request[31] for the laboratory examination of the following: one piece transparent cellophane sachet (labelled PA/JS-09-21-01 YB); two pieces empty transparent cellophane sachets (labelled PA/JS-09-21-05-02 YB and PA/JS-09-21-05-03 YB); two pieces aluminum foil used as tooters (labelled PA/JS-09-21-05-04 YB and PA/JS-09-21-05-05); and two pieces aluminum foil (labelled PA/JS-09-21-05-06 YB and PA/JS 09-21-05-07 YB). These were marked by De Guzman, the forensic chemical officer of the laboratory, as specimens "A," "B" and "B-1"; "C" and "C-1"; "D" and "E," respectively. On 22 September 2005, after the laboratory examination, De Guzman came up with Chemistry Report No. D-117-2005[32] stating that, except for specimen "E" labelled as PA/JS 09-21-05-06 YB, all the specimens were positive for the presence of methamphetamine hydrochloride.[33]

It was also on 21 September 2005 that the laboratory received the request[34] for drug/urine test on the appellants to determine whether they had used any prohibited drugs. The screening laboratory test and the confirmatory examination conducted the following day were done in the presence of the appellants. The screening tests on both appellants yielded positive results for the presence of methamphetamine hydrochloride and negative for marijuana. De Guzman's findings were contained in Chemistry Report Nos. DT-242-2005[35] and DT-243-2005[36] for Arposeple and Sulogaol, respectively. The confirmatory tests on the urine samples of the appellants likewise gave positive results for the presence of methamphetamine hydrochloride as evinced in Chemistry Report Nos. DT-242A-2005[37] and DT-243A-2005[38] for Arposeple and Sulogaol, respectively.[39]

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28 TSN, 25 May 2006, p. 17.
29 Record of Documentary Evidence, pp. 1-4; Exhs. "A" and "B."
30 TSN, 9 May 2006, p. 32; TSN, 25 May 2006, p. 17.
31 Record of Documentary Evidence, p. 6; Exh. "G."
32 Id. at 7; Exh. "H."
33 TSN, 18 April 2006, pp. 6-9.
34 Record of Documentary Evidence, p. 8; Exh. "I."
35 Id. at 9; Exh. "J."
36 Id. at 11; Exh. "K."
37 Id. at 9; Exh. "J-1."
38 Id. at 11; Exh. "K-1."
39 TSN, 18 April 2006, pp. 16-26.

The Version of the Defense

The defense presented their version of what happened in the morning of 21 September 2005 through Myra Tara *(Tara),* Joan Cortes Bohol *(Bohol),* Arposeple and Sulogaol.

Tara testified that at about 4:30 a.m. on 21 September 2005, while she was sleeping at the house she was renting with Cory Jane Rama *(Rama),* she was awakened by the appellants who wanted to borrow ₱200.00 to pay for the van that they hired to come back from Tubigon, Bohol. She handed the ₱200.00 to Sulogaol, and while peeping from the window, she saw Sulogaol hand the ₱200.00 to the driver of the van parked in front of the house.[40]

Arposeple and Sulogaol proceeded to the room the former used to rent but since its present occupant, Ondoy, had a visitor, Arposeple and Sulogaol went back to Tara's place and requested that she allow them to play *tong-its* inside her house while waiting for daylight. She acceded and allowed them to use her playing cards.[41]

While Tara, together with Rama, Jessa, and Susan, was sleeping inside the room, she was awakened by the sound of a strong kick to the door of the house. Two persons barged in saying, "We are policemen! Do not move!" while pointing their guns at Arposeple and Sulogaol. The two men grabbed Arposeple and Sulogaol, dragged them out of the house, and handcuffed them. Arposeple and Sulogaol protested while they were being frisked but to no avail. Two other policemen outside the house boarded Arposeple and Sulogaol into a parked police vehicle.[42]

Bohol, Tara's landlady, testified that she knew Arposeple, he being her former boarder. Before Arposeple's stay at her house, he stayed at an adjacent room which was occupied thereafter by Ondoy Belly. At about 2:00 a.m. on 21 September 2005, she observed a passenger van parked outside the house and saw Sulogaol hand money to its driver. At about 3:00 a.m., she heard banging on the door of the other house. Thinking nothing of the commotion, she went back to sleep.[43]

When Bohol woke up at about 6:00 a.m., she saw a vehicle and four uniformed policemen outside. She saw Arposeple and Sulogaol who, while resisting the policemen's arrest, claimed that they did not commit any crime. The policemen told Arposeple and Sulogaol to explain themselves at the

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40 TSN, 17 October 2006, pp. 4-7.
41 Id. at 7-9.
42 Id. at 9-13.
43 TSN, 10 May 2007, pp. 4-5 and 9-11.

police station. Arposeple, who was in handcuffs, and Sulogaol were made to board a vehicle.[44]

After the vehicle had gone, Bohol went to Tara's house and saw Tara, Jessa, Mylene Amora, and Tara's visitor seated on the bed and trembling. The house was in disarray and Tara's playing cards were scattered on the floor and on the bed. They told her that Arposeple and Sulogaol were playing cards with them when the policemen came; that Arposeple had refused to go with the policemen claiming he did not commit any crime.[45]

In his defense, Arposeple testified that in the early dawn of 21 September 2005, he went to Tara's house to borrow money to pay for the car rental. He and Sulogaol had come from Cebu and were on their way to Tubigon-Tagbilaran, Bohol, when they rented the van. He chose to pass by Tara to borrow ₱100.00 because she was his friend. After paying for the rental, he and Sulogaol stayed at Tara's place and played with her cards. Tara took care of her child while Susan, Jessa, and Cory were sleeping.[46]

At about 3:00 a.m., three men kicked the door, entered the house, and pointed their guns at him and Sulogaol. He asked what crime they had committed but Ramos told him to produce the shabu. He told PO2 Ramos he had nothing to show because he had no shabu. Ramos frisked him and Sulogaol while Ramos' companions searched around. Ramos found nothing on him and on Sulogaol.[47]

After a while, other policemen arrived and, together with Ramos, frisked him and Sulogaol. While he was in handcuffs, Ramos frisked him again.[48]

Ramos and his two companions then left and soon after returned with Jimenez. He and Sulogaol were again frisked and ordered to remove their clothes and to lower their underwear to their knees. Nothing was found in their person. Ramos got shabu, money, tin foil, and a lighter from his pocket and placed these on the table. Arposeple protested Ramos' act of planting evidence but Ramos told him to explain himself at the police station. He was made to board a police car while Sulogaol was being investigated by the policemen. He told Tara that she and Sulogaol would be his witnesses as they had seen the policemen plant evidence.[49]

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44 Id. at 12-15.
45 Id. at 16-20.
46 TSN, 22 May 2007, pp. 3-10.
47 Id. at 10-14.
48 Id. at 14-17
49 Id. at 17-20.

Arposeple was brought to the police station with Sulogaol where he complained that the policemen had planted evidence against him. Ramos told him that the items were not his (Ramos) but belonged to the CIDG. Arposeple did not request a lawyer when he was jailed because he has no relatives in Bohol. He was investigated by the chief of police and other policemen. He did not sign the inventory of the items allegedly taken from him because there was actually nothing found on him. Because he and Sulogaol were not willing to have their pictures taken at the police station, he was hit at the back of his head and slapped by a policeman while Sulogaol was hit on the stomach by Ramos.[50]

Sulogaol testified that in the early dawn of 21 September 2005, he and Arposeple were at Ubujan District, Tagbilaran City, to borrow ₱100.00 from Tara, Arposeple's friend, to pay for their v-hire fare. After paying for the fare, Arposeple and Sulogaol decided to stay at Tara's place to play cards until morning.[51]

While he and Arposeple were playing cards, two policemen in civilian clothes kicked the door and said they were conducting a raid. The policemen handcuffed Arposeple while he was picking up the scattered cards. The policemen pointed their guns at them. When Tara asked the policemen why Arposeple was handcuffed, they said that Arposeple sold shabu. Sulogaol and Arposeple were frisked twice by the policemen but nothing was found on them. Sulogaol saw Ramos put a plastic sachet containing shabu on the table. He told Ramos not to plant evidence against them since nothing was found on them. Two of the policemen left the room while the other two stayed behind to watch over him and Arposeple.[52]

After two hours, the two policemen who had earlier left returned with two barangay kagawads and a representative from the media. He and Arposeple were frisked again. While Arposeple was being boarded into the car, Jimenez told Sulogaol he would not be charged as long as he would testify against Arposeple. When he declined the offer, he was also made to board the vehicle. At the police station, he and Arposeple were made to sign a paper but when they refused, they were told to admit owning the shabu and the piece of the foil. When they refused to be photographed with the items that were allegedly seized, Arposeple was hit on the face while he was hit on the chest and struck with a placard on his right leg.[53]

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50 Id. at 21-28.
51 TSN, 28 June 2007, pp. 5-9.
52 Id. at 10-15.
53 Id. at 18-23.

The Ruling of the RTC

On 20 November 2007, the RTC rendered its decision[54] in these cases, viz:

> WHEREFORE, in Criminal Case No. 12852, the court finds accused Pablo Arposeple y Sanchez and Jhunrel Sulogaol y Datu, guilty beyond reasonable doubt of the offense of Violation of Section 5, Article II, of R.A. 9165, embraced in the afore-quoted information. There being no aggravating nor mitigating circumstance adduced and proven at the trial, the said accused are each hereby sentenced to the indivisible penalty of life imprisonment and to pay a fine of ₱300,000.00 Pesos, with the accessory penalties of the law, and to pay the costs.
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> In Criminal Case No. 12853, the court finds accused Pablo Arposeple y Sanchez, guilty beyond reasonable doubt of the offense of Violation of Section 11, Article II, of R.A. 9165, embraced in the aforequoted information. There being no aggravating nor mitigating circumstance adduced and proven at the trial, the said accused is hereby sentenced to the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, and to pay a fine of ₱200,000.00 Pesos, with the accessory penalties of the law, and to pay the costs.
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> In Criminal Case No. 12854, the court finds accused Pablo Arposeple y Sanchez, guilty beyond reasonable doubt of the offense of Violation of Section 12, Article II, of R.A. 9165, embraced in the afore-quoted information. There being no aggravating nor mitigating circumstance adduced and proven at the trial, the said accused is hereby sentenced to the indeterminate penalty of imprisonment of from SIX (6) MONTHS and ONE (1) DAY, as minimum, to FOUR (4) years, as maximum, and to pay a fine of ₱25,000.00 Pesos, with the accessory penalties of the law, and to pay the costs.
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> The charges against accused Jhunrel Sulogaol, under Criminal Case Nos. 12853 and 12854 are hereby ordered dismissed and the said accused acquitted, for insufficiency of evidence.
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> Accused, being detention prisoners are hereby credited in full of the period of their preventive imprisonment.
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> In compliance with Par. 4, Section 21 of R.A. 9165, the evidence in these cases consisting of one (1) sachet of shabu, with an aggregate weight of 0.01 gram, and paraphernalia with Shabu leftovers are hereby ordered confiscated, destroyed and/or burned, subject to the implementing guidelines of the Dangerous Drugs Board as to the proper disposition and destruction of such item.
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> SO ORDERED.[55]

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[54] Records (Crim. Case No. 12852), pp. 155-164; presided by Judge Baudilio K. Dosdos.

[55] Id. at 163-164.

The Ruling of the CA

Arguing that the essential elements of the crimes had not been established by the prosecution with moral certainty, the appellants appealed before the CA, Cebu City. The CA, through its Nineteenth Division,[56] however did not agree with the appellants and ruled that the trial court had the unique opportunity, denied of appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination.[57] The CA held that the prosecution witnesses categorically testified in court and positively identified the appellants, and that the buy-bust operation was regularly conducted by the police.[58] Moreover, it declared that although the team have not strictly complied with the requirements of the chain of custody, they had substantially complied therewith, viz: Ramos turned over the seized items to Bagotchay; on the same day, the items, which had been properly marked were turned over to the laboratory and received by PO2 Casagan; de Guzman made her own markings on the items; and the items were presented in court by Ramos and de Guzman, who identified that the items were those seized from the buy-bust operation where the appellants were arrested.[59]

The CA held that the failure of the buy-bust team in complying with Section *(Sec.)* 21, R.A. No. 9165 did not render the items as inadmissible in evidence considering that what were essential and necessary in drug cases were preserved by the arresting officers in compliance with the requirements of the law. On the one hand, the non-presentation of the informant was ruled by the CA as dispensable for the successful prosecution of the cases because his testimony will only be corroborative and cumulative.[60]

In compliance with Sec. 11(3), Article II of R.A. No. 9165, the CA found the need to modify in Crim. Case No. 12853 the fine imposed by the RTC to Arposeple from ₱200,000.00 to ₱300,000.00. Thus, the dispositive portion of the CA's decision reads:

> WHEREFORE, in view of the foregoing, the instant appeal is DENIED. Accordingly, the assailed 20 November 2007 Decision of the Regional Trial Court (RTC), Branch 2 of Tagbilaran City, Bohol is hereby AFFIRMED with MODIFICATION. The fine imposed to Pablo Arposeple y Sanchez in Criminal Case No. 12853 is hereby increased to Three Hundred Thousand Pesos (Php300,000.00)
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> No pronouncement as to costs.[61]

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56 *Rollo*, pp. 3-16. Penned by Associate Justice and Chairperson Edgardo L. Delos Santos, and concurred in by Associate Justices Ramon Paul L. Hernando and Victoria Isabel A. Paredes.

57 Id. at 11.

58 Id.

59 Id. at 12-13.

60 Id. at 14.

61 Id. at 15.

ISSUE

The sole issue raised by the appellants was the following:

> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE THEIR GUILT BEYOND RESONABLE DOUBT.

THE RULING OF THE COURT

The appeal is meritorious.

An accused is presumed innocent until his guilt is proven beyond reasonable doubt.

In all criminal cases, 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.[62]

In consonance with this constitutional provision, the burden of proof rests upon the prosecution[63] and the accused must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor.[64] Conversely, in convicting the accused all the elements of the crime charged must be proven beyond reasonable doubt, [65] viz:

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62 Sec. 14(2), Art. III of the 1987 Constitution.
63 *People v. Patentes*, 726 Phil. 590, 606 (2014).
64 *People v. Cruz*, 736 Phil. 564 , 580 (2014).
65 *Ngo v. People*, 478 Phil. 676, 680 (2004).

> *Sec. 2. Proof beyond reasonable doubt.* – x x x Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[66]

Settled in our jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is not on the accused to prove his innocence.[67]

On the one hand, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, 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.[68] This rule however is not set in stone as not to admit recognized exceptions considering that "an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers 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."[69] (citations omitted)

With these as our guideposts, we shall proceed to evaluate the records of these cases.

The charges against the appellants vis-à-vis the requirement on the unbroken chain of custody of the seized drugs

In Crim. Case No. 12852, Arposeple and Sulogaol were charged and convicted with violation of Sec. 5, Article *(Art.)* II of R.A. No. 9165.[70]

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66 Rule 133, Rules of Court.

67 *Macayan. Jr. v. People,* 756 Phil. 202, 214 (2015).

68 *People v. Tamaño, et al.,* G.R. No. 208643, 5 December 2016.

69 *Gamboa v. People*, G.R. No. 220333, 14 November 2016.

70 **Section 5.** Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or

In Crim. Case Nos. 12853 and 12854, although both appellants were charged with violation of Secs. 11[71] and 12,[72] Art. II of R.A. No. 9165, only

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transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.
The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[71] **Section 11.** *Possession of Dangerous Drugs.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;
(2) 10 grams or more of morphine;
(3) 10 grams or more of heroin;
(4) 10 grams or more of cocaine or cocaine hydrochloride;
(5) 50 grams or more of methamphetamine hydrochloride or "shabu";
(6) 10 grams or more of marijuana resin or marijuana resin oil;
(7) 500 grams or more of marijuana; and
(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (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, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) 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

Arposeple was convicted on both counts after the RTC ruled that the sachets of shabu and the drug paraphernalia were found only in his person after the team undertook a body search. It must be remembered that a person lawfully arrested may be searched without a warrant for anything which may have been used or may constitute proof in the commission of an offense.[73]

Jurisprudence dictates that to secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. 9165, the prosecution must establish the following: (1) the identity of the buyer and the seller, the object of the sale, and its consideration; and (2) the delivery of the thing sold and the payment therefor.[74] The essential elements of illegal possession of dangerous drugs under Sec. 11 are as follows: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[75] On the one hand, the elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sec. 12 are the following: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[76] The CA ruled that all the

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therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), 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.

72 **Section 12.** *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.* - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

73 *People v. Montevirgen*, 723 Phil. 534, 543 (2013).
74 *People v. Ismael*, G.R. No. 208093, 20 February 2017.
75 *People v. Minanga*, 751 Phil. 240, 248 (2015).
76 *People v. Villar*, G.R. No. 215937, 9 November 2016.

elements of the offenses charged against appellants were established with moral certainty.[77]

We do not agree.

In *People v. Jaafar*[78] we declared 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. 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.[79]

Equally significant therefore as establishing all the elements of violations of R.A. No. 9165 is proving that there was no hiatus in the chain of custody of the dangerous drugs and paraphernalia. It would be useless to still proceed to determine the existence of the elements of the crime if the *corpus delicti* had not been proven beyond moral certainty. Irrefragably, the prosecution cannot prove its case for violation of the provisions of R.A. No. 9165 when the seized items could not be accounted for or when there were significant breaks in their chain of custody that would cast doubt as to whether those items presented in court were actually those that were seized. An enlightened precedent provides for the meaning of chain of custody, viz:

> Chain of custody is defined as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[80]

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77 *Rollo*, p. 11.
78 G.R. No. 219829, 18 January 2017.
79 Id.
80 *People v. Ameril*, G.R. No. 203293, 14 November 2016.

The stringent requirement as to the chain of custody of seized drugs and paraphernalia was given life in the provisions of R.A. No. 9165, viz:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs. Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so 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;

The Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 provides the proper procedure to be followed in Sec. 21(a) of the Act, 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.

Even the Dangerous Drugs Board *(DDB)* – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy[81] – has expressly defined chain of custody

[81] Sec. 77, R.A. No. 9165.

involving the dangerous drugs and other substances in the following terms in Sec. 1(b) of DDB Regulation No. 1, Series of 2002,[82] to wit:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[83]

Jurisprudence dictates the links that must be established in the chain of custody in a buy-bust situation: *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.[84]

a. The first link was weak.

On the *first link*, the importance of marking had been discussed as follows:

> The first stage in the chain of custody is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**[85]

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[82] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.

[83] *People v. Gonzales*, 708 Phil. 121, 129-130 (2013).

[84] *People v. Poja*, G.R. No. 215937, 9 November 2016.

[85] *People v. Ismael*, supra note 74, citing *People v. Gonzales*, supra note 83 at 130-131.

The prosecution claimed that the body search conducted by Ramos on Arposeple yielded the seized items. The inventory of the items by Bagotchay outside Tara's house was witnessed by the appellants, two kagawads, and a representative each from the DOJ and the media. Except for the appellants, the witnesses to the inventory including Jimenez, as team leader, and Tara, as representative of the appellants, affixed their respective signatures on the certificate of inventory. Noteworthy, nothing was mentioned in the certificate of inventory as to the marking of the seized items considering that the certificate contained a plain enumeration of the items, viz:

> One (1) pc. transparent cellophane sachet containing suspected shabu powder
> Two (2) pcs. empty transparent cellophane sachets containing suspected shabu leftover
> Two (2) pcs. rolled aluminum foil used for tooter
> Two (2) pcs. folded aluminum foil
> Two (2) pcs. disposable lighters
> One (1) pc. bamboo clip
> One (1) pc. half blade
> One (1) pc. five hundred peso bill – as marked money bearing SN# GY 558660
> One (1) pc. one hundred peso (₱100) bill
> One (1) pc. playing card plastic case[86]

Ramos, Tabuelog, and Jimenez failed to explain how and when the seized items were marked. Ramos stated that after the inventory of the items the appellants were brought to the police station for proper disposition, i.e., the booking of the appellants, and the team's preparation of their report.[87] Ramos and Tabuelog executed their respective affidavits[88] relative to the buy-bust operation but both failed to mention anything therein as to what had happened to the seized items after the inventory and when these were probably brought to the police station for marking.

De Guzman admitted that she had no knowledge as to who made the markings on the evidence.[89] Even Ruiz's testimony never made mention of the marking. True, there were already markings on the seized items when these were submitted to the laboratory for examination but not one of the prosecution witnesses testified as to who had made the markings, how and when the items were marked, and the meaning of these markings. Conspicuously, the uncertainty exceedingly pervades that the items presented as evidence against the appellants were exactly those seized during the buy-bust operation.

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86 Record of Documentary Evidence, p. 5.
87 TSN, 6 June 2006, pp. 15-18.
88 Record of Documentary Evidence, pp. 1-4; Exhs. "A" and "B."
89 TSN, 18 April 2006, pp. 12-14.

Also glaring was the hiatus from the time the seized items were inventoried by Bagotchay in front of Tara's house to the time these were delivered to the laboratory. In his memorandum[90] relative to his request for the laboratory examination of the seized items, P/Supt. Ernesto Agas *(Agas)* stated that the evidence were obtained on 21 September 2005 at around 4:00 a.m. Bagotchay delivered the evidence to the laboratory, notably already marked, on the same day at 3:05 p.m. The lapse of eleven (11) hours for the submission of the seized items to the laboratory was significant considering that the preservation of the chain of custody vis-à-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.[91] In contrast, Agas' memorandum[92] pertinent to his request for the drug/urine tests of the appellants were forwarded to the laboratory on the same day at 9:50 a.m. or a gap of at least six (6) hours only.

Bagotchay, who was assigned by Jimenez as the custodian of the seized items, was never presented by the prosecution to elucidate on the following important matters: the significant break from the inventory to the actual marking of the items; how and when these items were marked; the justification for the long period it took him to submit these to the laboratory; the identity and signature of the person who held temporary custody of seized items; 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.[93]

To stress, in order that the seized items may be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the times it came into the possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[94] In *Mallillin v. People*[95] we were more definite on qualifying the method of authenticating evidence through marking, viz: "(I)t would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence; in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession; the condition in which it was received and the condition in which it was delivered to the next link in the chain."[96] We have scrupulously scanned the records but found nothing that would support a declaration that the seized items were admissible.

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90 Record of Documentary Evidence, p. 6; Exh. "G."
91 *People v. Reyes*, G.R. No. 199271, 19 October 2016, citing *People v. Mendoza*, 736 Phil. 749, 761 (2014).
92 Record of Documentary Evidence, p. 8; Exh. "I."
93 *People v. Ameril*, supra note 80.
94 *People v. Tamaño*, supra note 68.
95 576 Phil. 576 (2008), cited in *People v. Ismael*, supra note 74.
96 Id. at 587.

Section 21 of R.A. No. 9165 requires that the seized items be photographed 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 each from the media and the DOJ, and any elected public official. The records of these cases, however, were bereft of any showing of these photographs while the testimony of the prosecution witnesses were most notably silent on whether photographs were actually taken as required by law.

Certainly revealing from these findings was the consistent noncompliance by the team with the requirements of Sec. 21 of R.A. No. 9165. It must be remembered that this provision of the law was laid down by Congress as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.[97] While it may be true that noncompliance with Sec. 21 of Republic Act No. 9165 is not fatal to the prosecution's case provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers, this exception will only be triggered by the existence of a ground that justifies departure from the general rule.[98] The prosecution, however, miserably failed to prove that its cases fall within the jurisprudentially recognized exception to the rule.

The first link in the chain of custody was undoubtedly inherently weak which caused the other links to miserably fail. The first link, it is emphasized, primarily deals on the preservation of the identity and integrity of the confiscated items, the burden of which lies with the prosecution. The marking has a twin purpose, viz: **first,** to give the succeeding handlers of the specimen a reference, and **second,** to separate the marked evidence from the *corpus* of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence.[99] Absent therefore the certainty that the items that were marked, subjected to laboratory examination, and presented as evidence in court were exactly those that were allegedly seized from Arposeple, there would be no need to proceed to evaluate the succeeding links or to determine the existence of the other elements of the charges against the appellants. Clearly, the cases for the prosecution had been irreversibly lost as a result of the weak first link irretrievably breaking away from the main chain.

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97 *Rontos v. People*, 710 Phil. 328, 335 (2013).
98 *People v. Jaafar*, supra note 78.
99 *People v. Goco*, G.R. No. 219584, 17 October 2016.

b. The presumption of regularity in the performance of duty cannot prevail in these cases.

Even the presumption as to regularity in the performance by police officers of their official duties easily disappeared before it could find significance in these cases. Continuing accretions of case law reiterate that a high premium is accorded the presumption of innocence over the presumption of regularity in the performance of official duty, viz:

> We have usually presumed the regularity of performance of their official duties in favor of the members of buy-bust teams enforcing our laws against the illegal sale of dangerous drugs. Such presumption is based on three fundamental reasons, namely: *first*, innocence, and not wrongdoing, is to be presumed; *second*, an official oath will not be violated; and, *third*, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption. But the presumption is rebuttable by affirmative evidence of irregularity or of any failure to perform a duty. Judicial reliance on the presumption despite any hint of irregularity in the procedures undertaken by the agents of the law will thus be fundamentally unsound because such hint is itself affirmative proof of irregularity.
>
> The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. Trial courts are instructed to apply this differentiation, and to always bear in mind the following reminder issued in *People v. Catalan*:
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> > x x x We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

> Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.

It must be noted that the chemistry report[100] of De Guzman mentioned that the specimens submitted for examination contained either small amount[101] or traces[102] only of white substance which tested positive for methamphetamine hydrochloride. The informations in Crim. Case Nos. 12852 and 12853 respectively refer to a transparent cellophane sachet and two empty transparent cellophane sachets, each of which contained shabu weighing not more than 0.01 grams. Recent cases[103] have highlighted the need to ensure the integrity of seized drugs in the chain of custody when only a minuscule amount of drugs had been allegedly seized from the accused. Pertinently, we have held that "[c]ourts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving minuscule amounts of drugs . . . [as] they can be readily planted and tampered [with]." [104]

The guilt of the appellants was not proven beyond reasonable doubt.

This much is clear and needs no debate: the blunders committed by the police officers relative to the procedure in Sec. 21, R.A. No. 9165, especially on the highly irregular manner by which the seized items were handled, generates serious doubt on the integrity and evidentiary value of the items. Considering that the seized items constitute the *corpus delicti* of the offenses charged, the prosecution should have proven with moral certainty that the items confiscated during the buy-bust operation were actually those presented before the RTC during the hearing. In other words, it must be unwaveringly established that the dangerous drug presented in court as

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100 Record of Documentary Evidence, p. 7; Exh. "H."

101 Id.; Specimen "A."

102 Id.; Specimens "B," "B-1"; "C" and "C-1."

103 *People v. Jaafar*, supra note 78, citing *People v. Holgado*, 741 Phil. 78, 81 (2014); *Tuano v. People*, G.R. No. 205871, 28 September 2016; and *People v.Caiz*, G.R. No. 215340, 13 July 2016, 797 SCRA 26, 58.

104 *People v. Holgado*, 741 Phil. 78, 100 (2014).

evidence against the accused is the same as that seized from him in the first place.[105] Under the principle that penal laws are strictly construed against the government, stringent compliance with Sec. 21, R.A. No. 9165 and its IRR is fully justified.[106] The breaches in the procedure provided in Sec. 21, R.A. No. 9165 committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus delicti* had been compromised.[107]

To recapitulate, the records of these cases were bereft of any showing that the prosecution had discharged its burden to: (1) overcome the presumption of innocence which appellants enjoy; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation why the provisions of Sec. 21, R.A. No. 9165 were not complied with. This Court is thus constrained to acquit the appellants based on reasonable doubt.[108]

WHEREFORE, in view of the foregoing, we **REVERSE** and **SET ASIDE** the 3 October 2011 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00865. Accused-appellants Pablo Arposeple y Sanchez and Jhunrel Sulogaol y Datu are hereby **ACQUITTED** of the crimes charged for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered **IMMEDIATELY RELEASED** from detention unless they are otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Corrections 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

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105 *People v. Tamaño*, supra note 68.
106 *Rontos v. People*, supra note 97 at 335.
107 *Gamboa v. People*, supra note 69.
108 *People v. Ismael*, supra note 74.

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 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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III

DEC 12 2017