



Republic of the Philippines
Supreme Court
 Manila

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Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

MAR 08 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES **G.R. No. 212195**
Plaintiff-Appellee,

Present:

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

-versus-

**NAMRAIDA ALBOKA Y
 NANING @ "MALIRA,"**
Accused-Appellant.

Promulgated:

February 21, 2018

Wilfredo V. Lapitan

X-----X

DECISION

MARTIRES, J.:

This resolves the appeal of Namraida Alboka y Naning @ "Malira" (*Alboka*) from the Decision¹ of the Court of Appeals (*CA*), Seventeenth Division, in CA G.R. CR-H.C. No. 04918 which affirmed the Judgment² of the Regional Trial Court (*RTC*), Branch 204, Muntinlupa City, in Criminal Case Nos. 07-904 and 07-905 finding her guilty of Violation of Section (*Sec.*) 5 in relation to Sec. 26 and Sec. 11, both of Article (*Art.*) II of Republic Act (*R.A.*) No. 9165.

[Signature]

¹ *Rollo*, pp. 2-12. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Pedro B. Corales.

² *Records*, pp. 202-212. Penned by Judge Juanita T. Guerrero.

THE FACTS

Accused-appellant Alboka was charged before the RTC of Muntinlupa with two counts of violation of R.A. No. 9165, viz:

Crim. Case No. 07-904.³

(For Violation of Sec. 5 in relation to Sec. 26, Art. II of R.A. 9165)

That on or about the 1st day of December 2007, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually aiding one another, not being authorized by law, did then and there wilfully and unlawfully sell, trade, deliver, and give away to another one (1) piece of heat sealed transparent plastic sachet containing Methylamphetamine Hydrochloride, a dangerous drug, weighing 0.05 grams, in violation of the above-cited law.

CONTRARY TO LAW.

Crim. Case No. 07-905⁴

(For Violation of Sec. 11, Art. II of R.A. No. 9165)

That on or about the 1st day of December 2007 in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there wilfully and unlawfully have in her possession, custody and control two (2) pieces of heat sealed transparent plastic sachets each containing Methylamphetamine Hydrochloride, a dangerous drug weighing 0.05 gram each, in violation of the above-cited law.

CONTRARY TO LAW.

When arraigned, accused-appellant pleaded not guilty to the charges against her.⁵ Joint trial of the cases thereafter proceeded.

The Version of the Prosecution

The prosecution tried to establish its cases against the accused-appellant through the testimony of Gerald Marion Lagos (*Lagos*) and Rommel Turingan (*Turingan*), both members of the Philippine National Police (*PNP*) assigned to the Narcotic Operatives of the District Anti-Illegal Drugs, Special Operations Team, Southern Police District (*SPD*), Taguig City.

On 1 December 2007, the SPD received information from its informant that a certain alias "Bobby" was involved in drugs; hence, the

³ Id. at 1.

⁴ Id. at 2.

⁵ Id. at 31.

SPD sent thru fax a coordination form⁶ and a pre-operation report⁷ to the Philippine Drug Enforcement Agency (*PDEA*), which in turn issued a certificate of coordination.⁸ On the one hand, commanding officer Adolfo Samala gave Lagos the buy-bust money consisting of two (2) two hundred pesos⁹ bearing the marking "AS" representing his initials.¹⁰

During the briefing, Lagos and Turingan were assigned as poseur-buyer and back-up, respectively. It was agreed that Lagos would wink at the informant, who in turn would light his cigarette as a pre-arranged signal that the transaction was already consummated. After the briefing, the informant called Bobby and introduced Lagos as the buyer of the shabu.

Thereafter, the team, consisting of Lagos, Turingan, PSI Gollod, SPO3 Mallari, SPO3 de Lima, PO2 Boiser, PO2 Antonino, and the informant, proceeded to the Gospel Church along San Guillermo St., Putatan, Muntinlupa City. When they arrived there at around 9:30 p.m., the informant received a call from Bobby informing him that the item he ordered had been passed on to a certain Malira. Bobby told the informant that he and Lagos should proceed to the residence of one alias "Monta" at 302 San Guillermo St. and Monta would bring them to Malira.¹¹

After Lagos and the informant told Monta their purpose in coming to his house, Monta brought them to a store located ten meters away. At the store, Malira and Monta conversed. Malira asked Lagos and the informant if they were the persons contacted by Bobby. When they answered in the affirmative, Malira told them that Bobby had given her the item they had ordered which was worth four hundred pesos (₱400.00) each, and then inquired how much they would need. Malira added that one of the items she was selling was shabu. Lagos answered that ₱400.00 worth of shabu would be enough. Malira asked for the payment and Lagos handed her the buy-bust money. Upon her receipt of the money, Malira handed a sachet to Lagos who, after checking the item, winked at the informant who in turn lit his cigarette.¹²

Seeing that Turingan was already approaching the store, Lagos introduced himself to Malira as a police officer and told her she was being arrested for selling drugs. When he frisked Malira, Lagos was able to recover the marked money and two pieces of plastic sachets of shabu. Turingan did not find anything when he frisked Monta but he was able to recover one (1) plastic sachet of shabu on top of a display rack at the store.

⁶ Id. at 173, Exh. "A."

⁷ Id. at 174, Exh. "B."

⁸ Id. at 175, Exh. "C."

⁹ Id. at 176, Exhs. "D" and "D-1."

¹⁰ TSN, 2 October 2008, pp. 4-8.

¹¹ Id. at 9-11; Records p. 5.

¹² Id. at 11-14.

Both Monta and Malira were informed of their constitutional rights. Lagos placed the respective markings “GL-1-011207,”¹³ “GL-2-011207,”¹⁴ “GL-3-011207,”¹⁵ and “GL-4-011207”¹⁶ on the sachet of shabu handed to him by Malira and on the three other sachets recovered. The markings represented the initials of Lagos and the date, month, and year the crime happened. Monta and Malira were then brought to the SPD where their respective identities were determined as Montasir Satol (*Satol*) and Namraida Alboka. Lagos was in possession of the seized items and the marked money from the time that he left the scene of the crime until he reached the SPD.¹⁷

On that same night, Lagos turned over the seized items to SPO3 Salvio de Lima (*De Lima*) for the preparation of the request for laboratory examination.¹⁸ A request was likewise prepared for the drug testing¹⁹ of Satol and the accused-appellant. Lagos and Turingan brought the seized items to the SPD crime laboratory on 2 December 2007 at 4:25 a.m. The laboratory report²⁰ showing that the seized items were positive for methamphetamine hydrochloride was released on the same day.²¹

The team prepared the booking and information sheet²² of accused-appellant and a spot report²³ to inform the PDEA of the result of the operation. Lagos and Turingan also executed their joint affidavit of arrest²⁴ detailing the conduct of the buy-bust operation.²⁵

The testimony of Police Senior Inspector Richard Allan Mangalip (*Mangalip*), the forensic chemist of the SPD Crime Laboratory Office, was dispensed with after the parties made the following admissions during the pre-trial conference, to wit:

That PS/Insp. Richard Allan B. Mangalip is a forensic chemist connected with the SPD Crime Laboratory, Makati City as of December 2, 2007 and that he is an expert in forensic chemistry;

That pursuant to the Request for Laboratory Examination, he conducted laboratory examination on the specimen which consists of one (1) small brown envelope containing: one (1) small heat-sealed transparent plastic sachet with white crystalline substance; two (2) small heat-sealed transparent plastic sachets containing white crystalline substance; and one (1) small heat-sealed transparent plastic sachet containing white crystalline

¹³ TSN 27 May 2010 p. 3, Exh. “K.”

¹⁴ Id. Exh. “K-1.”

¹⁵ Id. Exh. “K-2.”

¹⁶ Id. Exh. “K-3.”

¹⁷ TSN, 2 October 2008, pp. 14-18.

¹⁸ Records, p.177, Exh. “E.”

¹⁹ Id. at 179, Exh. “G.”

²⁰ Id. at 178, Exh. “F.”

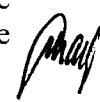
²¹ TSN, 2 October 2008, pp.19-20.

²² Records, p. 181, Exh. “I.”

²³ Id. at 180, Exh. “H.”

²⁴ Id. at 182-183, Exh. “J.”

²⁵ TSN, 2 October 2008, pp. 21-22.



substance, and which tested positive for Methylamphetamine Hydrochloride.²⁶

The Version of the Defense

To prove her innocence, the accused-appellant testified.


On 1 December 2007 at around 7:00 p.m., while the accused-appellant was at her store carrying her six-month-old child, a man suddenly entered her store and poked his gun at her. She ran towards the billiard hall located about 10 meters from her store but another man arrived and likewise poked his gun at her. Thereafter, she was handcuffed and made to board a vehicle. Her shouts for help caught the attention of the lady owner of the house where her store was. The owner asked the two men what they were doing to the accused-appellant and her child but the men told her to just get the child as she might also get involved.²⁷

While inside the vehicle, the accused-appellant cried and asked the two men what crime she had committed. The men and their companions insisted that she lead them to the location of a person they were looking for. When she replied that she did not know that person, she was told that she would be charged; one of the men hit her on the head with a comb while another hit her on the forehead with a cellphone. She remained silent as she was afraid.²⁸

It was about 2:00 a.m. the following day that she was brought to Makati where her urine sample was taken. She was asked whether she was hurt but she remained silent because the men who brought her there made her hide her bruises. Later, she was brought to Fort Bonifacio where she was told to shell out ₱300,000.00 for her release; because she did not have the amount, she was charged with the crimes.²⁹

The Ruling of the RTC

In Crim. Case No. 07-904, the RTC ruled that the testimony of Lagos and Turingan were direct, unwavering, and consistent on material points that leave no doubt as to their truthfulness; and that the police officers had no reason to concoct the charges against the accused-appellant; while the accused-appellant simply denied that the buy-bust operation occurred.³⁰



²⁶ Records, p. 68.

²⁷ TSN, 23 September 2010, pp. 3-6.

²⁸ Id. at 7-9.

²⁹ Id. at 9-10.

³⁰ Records, p. 209.

In Crim. Case No. 07-905, the RTC held that the accused-appellant was caught *in flagrante delicto* selling shabu, an overt act which justified Lagos to search for and seize the illegal items in her possession. The RTC noted that while Lagos was not able to prepare the certificate of inventory of the items which were seized and subsequently identified in court, he nonetheless took steps not to compromise the purity and integrity of the items: by marking them at the place of arrest and having the custody thereof throughout the operation until these were delivered and received by the crime laboratory for examination. The RTC concluded that Lagos had substantially complied with the requirements provided for under Sec. 21, Art. II of R.A. No. 9165 and its implementing rules and regulations.³¹ Thus, the RTC resolved the charges against the accused-appellant as follows:

WHEREFORE, finding accused GUILTY beyond reasonable doubt of Violation of Sec. 5, Art. II of R.A. No. 9165 in Criminal Case No. 07-907, NAMRAIDA ALBOKA y NANING is sentenced to LIFE IMPRISONMENT and to pay a fine of Php500,000.00; and of Violation of Sec. 11, Art. II of R.A. No. 9165 in Criminal Case No. 07-905, she is sentenced to an 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 Php300,000.00.

The subject drug items are ordered transmitted to the Philippine Drug Enforcement Agency for proper disposition.

The preventive imprisonment undergone by the accused shall be credited in her favour.

SO ORDERED.³²

The Ruling of the CA

Feeling aggrieved with the resolution of the RTC on the charges against her, the accused-appellant appealed to the CA which found the appeal to be without merit.

The CA noted that the accused-appellant did not assail the chain of custody of the evidence albeit she raised the issue on the failure of the buy-bust team to conduct an inventory of the seized items at the crime scene. The CA ruled, however, that even if the procedural requirements in Sec. 21 of R.A. No. 9165 were not faithfully observed, as long as the chain of custody remains unbroken, the guilt of the accused would not be affected. Moreover, it held that the accused-appellant failed to overcome the presumption that the police officers handled the seized items with regularity.³³



³¹ Id. at 211.

³² Id. at 212.

³³ *Rollo*, pp. 7-9.

According to the CA, the accused-appellant was caught *in flagrante delicto* and that the prosecution was able to prove all the elements for the crime of illegal sale of dangerous drugs. The crime was consummated with the police officer going through the operation as a buyer, whose offer was accepted by the accused-appellant, followed by the delivery of the dangerous drugs to the buyer.³⁴

On the charge of illegal possession of shabu, the CA held that after the lawful arrest of the accused-appellant resulting from the buy-bust operation, two more plastic sachets suspected to contain shabu were recovered in her possession. The CA observed that the record was bereft of any showing that the accused-appellant had the authority to possess these two plastic sachets which actually contained shabu.³⁵

The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the present appeal is **DENIED** for lack of merit. The assailed decision dated January 28, 2011, rendered by the Regional Trial Court, Branch 204, Muntinlupa City, is hereby **AFFIRMED in toto**.³⁶

ISSUE

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HER GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

OUR RULING

The appeal is meritorious.

The general rule that the findings of the trial court and the appellate court as to the credibility of the prosecution witnesses are binding upon the Court, does not apply to the present case.



³⁴ Id. at 9-10.

³⁵ Id. at 10.

³⁶ Id. at 11.

As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.³⁷ The evaluation of the trial court judge from the viewpoint of having observed the witness on the stand, coupled by the fact that the CA affirmed the findings of the trial court, is binding on the Court unless it can be shown that facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner.³⁸

Jurisprudence even abounds on the well-chiseled exceptions to this general rule, viz: (1) when the factual findings of the CA and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (3) when the inference made by the CA from the findings of fact is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the CA is premised on misapprehension of facts; (7) when the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record.³⁹

A review of the records will prove that the trial and the appellate courts have overlooked facts and circumstances which would have affected the resolution of the cases filed against the accused-appellant.

***There was a broken
chain of custody of
evidence.***

Enlightened jurisprudence is consistent as to the elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal sale of dangerous drugs under Sec. 5,⁴⁰ Art. II of R.A.

³⁷ *People v. Baay*, G.R. No. 220143, 7 June 2017.

³⁸ *People v. Belen*, G.R. No. 215331, 23 January 2017.

³⁹ *Dela Cruz v. People*, G.R. No. 163494, 3 August 2016, 799 SCRA 216, 224-225.

⁴⁰ **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 (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall

No. 9165,⁴¹ viz: (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.⁴² What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.⁴³

For illegal possession of dangerous drugs under Sec. 11,⁴⁴ the following elements must be established: (1) the accused was in possession of

sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or 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 (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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 (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

⁴¹ Entitled "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act NO. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as amended, Providing Funds Therefor, and for other Purposes" and dated 7 June 2002.

⁴² *People v. Macapundag*, G.R. No. 225965, 13 March 2017,

⁴³ *People v. Ismael*, G.R. No. 208093, 20 February 2017.

⁴⁴ **Section 11. Possession of Dangerous Drugs.** - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) 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 (P400,000.00) to Five hundred thousand pesos (P500,000.00), 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 (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the

dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.⁴⁵

The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself.⁴⁶ “For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that their integrity is well preserved — from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. The fact that the substance said to have been illegally sold or possessed was the very same substance offered in court as exhibit must be established.”⁴⁷ The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.⁴⁸

The chain of custody is defined under Sec. 1 (b) of Dangerous Drugs Board Regulation No. 1, series of 2002,⁴⁹ 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 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.

The chain of custody was further explained by this Court in *Mallillin v. People*,⁵⁰ viz:



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

⁴⁵ *People v. Macapundag*, supra note 42.

⁴⁶ *People v. Hementiza*, G.R. No. 227398, 22 March 2017.

⁴⁷ *People v. Arce*, G.R. No. 217979, 22 February 2017.

⁴⁸ *People v. Ismael*, supra note 43.

⁴⁹ Entitled “Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.”

⁵⁰ 576 Phil. 576, 587-589 (2008).

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in 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. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange. In other words, the exhibits level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham v. State* positively acknowledged this danger. In that case where a substance was later analyzed as heroin — was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession — was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of the police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.



In connection thereto, Sec. 21 of R.A. No. 9165 provides for the manner by which law enforcement officers should handle the seized items in dangerous drugs cases:

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

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

2. Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

3. A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

Thus, as a general rule, the four links in the chain of custody of the confiscated item must be established: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁵¹ The prosecution has the burden of proving each of the link from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.



⁵¹ *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

An evaluation of the prosecution's evidence will prove that there was an irreversible broken chain in the custody of evidence that casts suspicion on the integrity and evidentiary value of the seized items, viz:

a. the seizure and marking

*People v. Breis*⁵² defined marking as follows:

“Marking” is the placing by the apprehending officer of some distinguishing signs with his/her initials and signature on the items seized. It helps ensure that the dangerous drugs seized upon apprehension are the same dangerous drugs subjected to inventory and photography when these activities are undertaken at the police station or at some other practicable venue rather than at the place of arrest. Consistency with the “chain of custody” rule requires that the “marking” of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.

Lagos claimed that he placed the markings “GL-1-011207,” “GL-2-011207,” “GL-3-011207,” and “GL-4-011207” on the sachet of shabu handed to him by Malira and on the three other sachets recovered. Worthy of note, however, was the evident failure of the prosecution in eliciting from its witnesses where and when the markings were placed, and whether the markings were placed in the presence of the accused-appellant. While it was during the re-cross examination that it was shown that the markings were placed by Lagos at the scene of the crime,⁵³ the joint affidavit of arrest was deafeningly quiet on this matter.

Glaring likewise was that the records failed to show that a physical inventory of the seized items was conducted in the presence of the accused-appellant, a representative from the media, the DOJ, and any elected public official, and that the items were photographed. Lagos claimed that he knew that other than the marking, the inventory was also required,⁵⁴ yet he never made a written record of the items allegedly seized during the buy-bust operation. It bewilders that the prudent decision observed by the SPD in coordinating with the PDEA, i.e., by sending thru fax the coordination form and the pre-operation report prior to the conduct of the buy-bust operation, was not observed pertinent to the marking, inventory, and taking pictures of the seized items in this case.



⁵² 766 Phil. 785, 801-802 (2015).

⁵³ TSN, 6 November 2008, p. 20.

⁵⁴ Id. at 20-21.

It must be underscored that the IRR⁵⁵ of R.A. No. 9165 mirrors the content of Sec. 21, Art. II of the same law, but adds that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Sec. 21, Art. II – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.⁵⁶ Any departure from the prescribed procedure must then still be reasonably justified, and must further be shown not to have affected the integrity and evidentiary value of the confiscated contraband.⁵⁷

Worthy of note was the fact that the prosecution had failed to recognize and to prove the justifiable reasons for these procedural lapses on the part of the police officers thereby generating question on the integrity of the seized items. Simply put, because the integrity and evidentiary value of the seized items had been compromised, the flagrant nonconformity by the buy-bust team with Sec. 21, Art. II of R.A. No. 9165 rendered void the seizure and custody of these items.

***b. the turnover of the
illegal drug seized by
the apprehending
officer to the
investigating officer.***

On that same night, Lagos turned over the seized items to De Lima allegedly for the preparation of the request for the laboratory examination. Lagos claimed that De Lima was the investigator of the case; thus, Lagos left the items with De Lima. Lagos, who then roamed around the headquarters, admitted that he was not aware where De Lima had taken the seized items.⁵⁸



⁵⁵ SECTION 21.(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/ s from whom such items were confiscated and/ or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer /team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

⁵⁶ *Gamboa v. People*, G.R. No. 220333, 14 November 2016.

⁵⁷ *People v. Barte*, G.R. No. 179749, 1 March 2017.

⁵⁸ TSN, 6 November 2008, p. 16-17.

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

No explanation was offered by the prosecution on why Lagos and Turingan were the ones who brought the seized items to the SPD crime laboratory⁵⁹ instead of De Lima. Notwithstanding the markings placed by Lagos on the seized items, it still cannot be definitely ascertained whether these were the exact items that he left with De Lima, while he roamed around the headquarters after leaving these with the investigator.

d. the turnover and submission of the marked illegal drug seized from the forensic chemist to the court

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.⁶⁰

It will be noted that the testimony of Mangalip was dispensed with after the parties agreed to stipulate that he was a forensic chemist and that he conducted a laboratory examination on the four plastic sachets which he found positive for methamphetamine hydrochloride. While it is true that the seized items were identified by Lagos during the hearing, the prosecution however miserably failed to show who brought the seized items before the trial court.

The Court is mindful of the presumption of regularity in the performance of duties by public officers, but it must be emphasized that the presumption can be overturned if evidence is presented to prove either of two things, namely: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.⁶¹ Irrefragably, the records do not sustain a finding that the police officers had improper motive to falsely testify against the accused-appellant, but the serious and irreparable gaps in the chain of custody of evidence highlighted the reality that the police officers did not accurately perform their duties. Serious uncertainty is generated on the identity of the shabu in view of the broken

⁵⁹ Id. at 19-20; TSN, 2 October 2008, p. 19; TSN, 3 September 2009, p.16.

⁶⁰ *People v. Hementiza*, supra note 46.

⁶¹ *People v. Barte*, supra note 57.

linkages in the chain of custody; thus, the presumption of regularity in the performance of official duty accorded to the apprehending officers by the trial and the appellate courts cannot arise.⁶²

The breaches in procedure contained in Sec. 21, Art. II of R.A. No. 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellant as the integrity and evidentiary value of the *corpus delicti* had been compromised.⁶³ The inappropriate manner of handling the evidence prior to its offer in court, diminishes the government's chance of successfully prosecuting a drug case.⁶⁴

The guilt of the accused-appellant must be established beyond reasonable doubt.

The conviction of an accused can only be justified if his guilt has been established beyond reasonable doubt. The requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.⁶⁵ While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience.⁶⁶

The conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the prosecution has not discharged its burden of proof in establishing the commission of the crime charged.⁶⁷ This is premised on the constitutional presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt.⁶⁸ And it is precisely because of this presumption that the Court is required “as an appellate court to sift the records and search for

⁶² *People v. Gayoso*, supra note 51.

⁶³ *Gamboa v. People*, supra note 56.

⁶⁴ *People v. Gayoso*, supra note 51.

⁶⁵ *People v. Manson*, G.R. No. 215341, 28 November 2016.

⁶⁶ *Daayata v. People*, G.R. No. 205745, 8 March 2017.

⁶⁷ *People v. Claro*, G.R. No. 199894, 5 April 2017.

⁶⁸ *People v. Rodriguez*, G.R. No. 211721, 20 September 2017.

every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused. In this instance, therefore, the Court is not limited to the assigned errors, but can consider and correct errors though unassigned, and even reverse the decision on grounds other than those the parties raised as errors.⁶⁹

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 the accused-appellant enjoy; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (3) 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 accused-appellant based on reasonable doubt.⁷⁰

The Court takes this opportunity to remind the law enforcement and the prosecutorial agencies that the arduous task in diminishing, if not totally eradicating, the drug problem in the country can only be accomplished if they would be prudent in the performance of their respective functions. To stress, law enforcers should not only be mindful of the procedures required in the seizure, handling, and safekeeping of confiscated drugs, but the prosecution should also prove every material detail in court.⁷¹

WHEREFORE, in view of the foregoing, we **REVERSE** and **SET ASIDE** the 23 October 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04918. Accused-appellant NAMRAIDA ALBOKA y NANING @ "MALIRA" is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered **IMMEDIATELY RELEASED** unless she is otherwise detained for some other case/s.

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.



⁶⁹ *People v. Barte*, supra note 57.

⁷⁰ *People v. Ismael*, supra note 43.

⁷¹ *People v. Hementiza*, supra note 46.



SAMUEL R. MARTIRES
Associate Justice

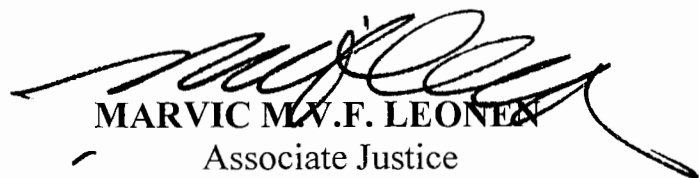
WE CONCUR:



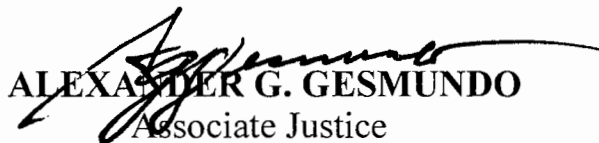
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice




MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

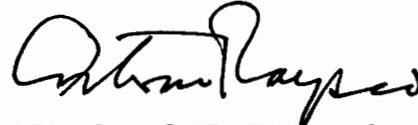
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

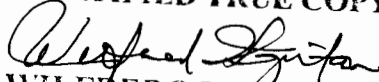
CERTIFICATION

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



ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAR 08 2018