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Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 237802

Present:

BERSAMIN, *CJ.*,*
DEL CASTILLO,** *Acting Chairperson,*
JARDELEZA,
GISMUNDO, and
CARANDANG, *JJ.*

- versus -

MACMAC BANGCOLA y MAKI,
Defendant-Appellant.

Promulgated:

MAR 18 2019

X ----- X

DECISION

GISMUNDO, J.:

This is an appeal seeking to reverse and set aside the January 3, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09030. The CA affirmed the January 26, 2017 Consolidated Decision² of the Regional Trial Court of Marikina City, Branch 193 (RTC) in Criminal Case Nos. 2014-4356-D-MK and 2014-4357-D-MK, finding Macmac Bangcola y Maki (*appellant*) guilty beyond reasonable doubt of the crimes of illegal sale and possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

* On official business.

** Per Special Order No. 2645 dated March 15, 2019.

¹ *Rollo*, pp. 2-21; penned by Associate Justice Ramon R. Garcia with Associate Justices Myra V. Garcia-Fernandez and Henri Jean Paul B. Inting, concurring.

² *CA rollo*, pp. 43-58; penned by Judge Alice C. Gutierrez.

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The Antecedents

In an Amended Information filed before the RTC, appellant and one Salim Lala Pimba (*Pimba*) were charged with the crime of illegal sale of dangerous drugs, in violation of Sec. 5, Art. II of R.A. No. 9165. The accusatory portion of the amended information states:

CRIMINAL CASE NO. 2014-4356 D-MK

That on or about the 20th day of June 2014, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, without being authorized by law, did then and there willfully, unlawfully and knowingly sell and deliver to PO3 Deogracias Basang, a poseur buyer, one (1) heat[-]sealed small transparent plastic sachet containing 0.20 gram[s] of white crystalline substance which gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.³

In a separate information, appellant was also charged with the crime of illegal possession of dangerous drugs, in violation of Sec. 11, Art. II of R.A. No. 9165. The accusatory portion of the information states:

CRIMINAL CASE NO. 2014-4357-D-MK

That on or about the 20th day of June 2014, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control of thirteen (13) heat[-]sealed transparent plastic sachets containing methamphetamine hydrochloride, a dangerous drug in violation of the above-cited law.

CONTRARY TO LAW.⁴

³ Records, p. 59.

⁴ Id. at 23.

Upon his arraignment on August 7, 2014,⁵ appellant pleaded not guilty to the crimes charged while his co-accused, Pimba, remained at large. Thereafter, trial ensued.

The prosecution presented Senior Police Officer I Deogracias Basang (*SPO1 Basang*). The testimony of Police Chief Inspector Margarita M. Libres (*PCI Libres*), the forensic chemist, was dispensed with after both parties stipulated on the existence of the request for laboratory examination, the receipt of the drug specimens, and the physical science report she prepared.⁶

Version of the Prosecution

On June 20, 2014, a confidential informant reported to the Station Anti-Illegal Drugs, Office of the Marikina City Police Station, that appellant was engaged in illegal drug activities at Barangay Tumana, Marikina City. A buy-bust team was then formed consisting of Police Inspector Jerry Flores (*P/Insp. Flores*) as the team leader, SPO1 Basang as the poseur-buyer, and several other police officers as back-up operatives. SPO1 Basang was given two (2) pieces of marked Five Hundred Peso (₱500.00) bills to be used as buy-bust money. The pre-arranged signal was the lighting of a cigarette upon consummation of the sale.⁷

On even date, at about 10:30 in the evening, the buy-bust team and the confidential informant proceeded to the target area. While the rest of the buy-bust team hid and positioned themselves, SPO1 Basang and the confidential informant entered an alley where they saw two (2) men. The confidential informant then introduced SPO1 Basang to appellant while Pimba introduced himself as "Salim." Pimba asked SPO1 Basang how much he would purchase to which he replied "₱1,000.00." Pimba told appellant "*Mac, ikaw na ang magbigay*" while handing him a red body bag. SPO1 Basang gave the two marked ₱500.00 bills to appellant. Appellant then brought out a brown-striped pouch and took out therefrom one small plastic sachet, which he handed to SPO1 Basang and said "*Pare, ito yung halagang isang libo.*" At that moment, SPO1 Basang lit a cigarette, which prompted the buy-bust team to rush towards the crime scene. SPO1 Basang introduced himself as a police officer, grabbed appellant's right arm, and arrested appellant. Pimba, however, managed to escape. The red body bag, the brown-striped pouch, the buy-bust money, and other cash in his possession, amounting to ₱1,990.00, were confiscated from appellant. Thirteen (13) more small plastic sachets containing white crystalline substance were found in the possession of appellant. SPO1 Basang marked the plastic sachet

⁵ Id. at 49.

⁶ Id. at 68.

⁷ *Rollo*, p. 5.

purchased from appellant with “MB-BUYBUST 6/20/14” in the latter’s presence.⁸

Thereafter, P/Insp. Flores decided to continue the inventory and marking of the other pieces of evidence at the Barangay Hall of Tumana because it was dark at the alley where appellant was arrested and appellant’s relatives were already causing a commotion at the time.⁹

City Councilor Ronnie Acuña (*Acuña*) and Cesar Barquilla (*Barquilla*) of Remate tabloid newspaper were present during the inventory, marking, and photograph-taking of evidence at the barangay hall. The thirteen (13) plastic sachets were marked as “MB-1 6/20/14” to “MB-13 6/20/14.” The Inventory of Evidence¹⁰ of the seized items was signed by Acuña and Barquilla while appellant refused to sign the same. The Chain of Custody Form¹¹ was then prepared by SPO1 Basang.¹²

Appellant was thereafter brought to the police station. A request for laboratory examination by the PNP Crime Laboratory was prepared by P/Insp. Flores to determine the presence of any form of dangerous drugs in the seized items. SPO1 Basang turned over the pieces of evidence to PCI Libres for the purpose of forensic examination.¹³

In her Report¹⁴ dated June 21, 2014, PCI Libres confirmed that the small plastic sachet marked “MB-BUYBUST 6/20/14,” which weighed 0.20 gram, was positive for methamphetamine hydrochloride or *shabu*. The thirteen (13) small plastic sachets additionally found in the possession of appellant and marked as “MB-1 6/20/14” to “MB-13 6/20/14,” with a total weight of 34.12 grams, were also found positive for methamphetamine hydrochloride.

Version of the Defense

The defense presented appellant as its sole witness. He testified that, around 10 or 11 o’clock in the evening of June 20, 2014, he was sitting alone at the end of the bridge of Barangay Tumana, Marikina City. Suddenly, two police officers approached him and verified his identity. Appellant was then ordered to board a vehicle and was taken to a vacant lot where several drug paraphernalia were shown to him. Afterwards, appellant was brought to the

⁸ Id. at 6.

⁹ Id.

¹⁰ Records, p. 12.

¹¹ Id. at 11.

¹² CA rollo, p. 48.

¹³ Rollo, p. 7.

¹⁴ Records, p. 8; Physical Science Report No. MCSO-D-060-14.

barangay hall and the police station. The police officers told him that he would be imprisoned despite not having committed any offense. On cross-examination, appellant denied that he was with Pimba at the time of his arrest and that there were items recovered from him.¹⁵

The RTC Ruling

In its January 26, 2017 Consolidated Decision, the RTC found appellant guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs. In Criminal Case No. 2014-4356-D-MK, appellant was sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of ₱500,000.00. In Criminal Case No. 2014-4357-D-MK, appellant was sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and ordered to pay a fine of ₱300,000.00.¹⁶

The RTC ruled that there was satisfactory compliance with the requirements of the law on the proper chain of custody of dangerous drugs. Although the confiscated drugs were not inventoried, marked, and photographed at the place where appellant was arrested, the prosecution gave a valid justification for the same, such that the place was not well-lit and the relatives of appellant were starting to cause a commotion at the time. The RTC held that the marking of the confiscated drugs at the barangay hall did not affect the integrity and evidentiary value of the seized items. The RTC also underscored that appellant's defense of denial was unsubstantiated by clear and convincing evidence, hence, deserved no credence at all.¹⁷

Aggrieved, appellant appealed to the CA.

The CA Ruling

In its January 3, 2018 Decision, the CA affirmed appellant's conviction. It ruled that the prosecution was able to establish all the elements of illegal sale and possession of dangerous drugs. It gave full credence to SPO1 Basang's positive identification of appellant and his narration of the buy-bust operation, more so because it was supported by physical evidence on record, such as PCI Libres' forensic examination report. It ruled that there was no break in the chain of custody of the confiscated drugs, notwithstanding the absence of a representative from the Department of Justice (DOJ) at the time the evidence were being inventoried, marked, and photographed. It held that such absence did not affect the preservation of the integrity and evidentiary value of the seized items, as in the case of *People v.*

¹⁵ *Rollo*, p. 7.

¹⁶ *CA rollo*, p. 57.

¹⁷ *Id.* at 50-56.

Agulay.¹⁸ It noted, however, that the prosecution's failure to indicate the quantity of the confiscated drugs in the information for illegal possession of dangerous drugs entailed the imposition of the minimum penalty corresponding to possession of *shabu*, which was essentially the same as the penalty imposed by the RTC.

Appellant then appealed before the Court.

In an April 16, 2018 Resolution,¹⁹ the Court required the parties to submit their respective supplemental briefs, if they so desired. In its June 26, 2018 Manifestation and Motion,²⁰ the Office of the Solicitor General (*OSG*) manifested that it would no longer file a supplemental brief to avoid a repetition of arguments considering that the guilt of appellant has been exhaustively discussed in its appellee's brief filed before the CA. In its June 27, 2018 Manifestation in lieu of Supplemental Brief,²¹ appellant averred that he would no longer file a supplemental brief considering that he had thoroughly discussed the assigned errors in his appellant's brief.²²

Issue

WHETHER THE GUILT OF APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In his Appellant's Brief²³ before the CA, appellant reiterates that the element of consideration was lacking since the ₱500.00 bills were not marked or subjected to ultraviolet power-dusting; that the lack of signature on the sachets allegedly confiscated from appellant cast reasonable doubt on the source and handling of the evidence; that the chain of custody rule was not complied with due to the absence of a DOJ representative during the inventory of evidence; that there was lack of sufficient evidence to prove

¹⁸ 588 Phil. 247, 273-274 (2008). In this case, the Court ruled: "[T]he defense contends there is a clear doubt on whether the specimens examined by the chemist and eventually presented in court were the same specimens recovered from accused-appellant. The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated pursuant to Section 21, Article II of Republic Act No. 9165 will not discharge accused-appellant from his crime. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. In *People v. Del Monte*, this Court held that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the instant case, we find the integrity of the drugs seized intact, and there is no doubt that the three sachets of drugs seized from accused-appellant were the same ones examined for chemical analysis, and that the crystalline substance contained therein was later on determined to be positive for methylamphetamine hydrochloride (*shabu*)."

¹⁹ *Rollo*, pp. 28-29.

²⁰ *Id.* at 35-37.

²¹ *Id.* at 30-32.

²² *Id.* at 30.

²³ *CA rollo*, pp. 24-41.

that Acuña was indeed an incumbent councilor and Barquilla was a mediaman from Remate tabloid newspaper; and that the chain of custody was broken because of the prosecution's failure to identify the investigator who prepared the requests for laboratory examination of the sachets and drug testing of appellant.²⁴

In its Appellee's Brief²⁵ before the CA, the OSG urges the court to affirm the challenged decision of the RTC. The OSG countered that, notwithstanding the lack of marking and dusting of the ₱500.00 bills and the lack of signature on the sachets of the confiscated drugs from appellant, SPO1 Basang's categorical testimony – that the bills were used as the buy-bust money and that the sachets presented in court were the same ones confiscated from appellant – is sufficient. It also insists that the chain of custody rule was complied with albeit admitting that such compliance was not done strictly and perfectly in accordance with the requirements of the law. It opined that the inventory, marking, and photograph-taking of evidence at the barangay hall was justified given the poor lighting conditions at the place of arrest and because appellant's relatives were already causing a commotion.²⁶

The Court's Ruling

The appeal is meritorious.

In every criminal prosecution, the Constitution affords the accused presumption of innocence until his or her guilt for the crime charged is proven beyond reasonable doubt.²⁷ The prosecution bears the burden of overcoming this presumption and proving the liability of the accused by presenting evidence which shows that all the elements of the crime charged are present.²⁸

To sustain a conviction for the offense of illegal sale of dangerous drugs, the necessary elements are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.²⁹ It is essential that a transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of the

²⁴ Id. at 33-40.

²⁵ Id. at 64-87.

²⁶ Id. at 74-85.

²⁷ CONSTITUTION (1987), Art. III, Sec. 14, par. (2).

²⁸ See *People v. Garcia*, 599 Phil. 416, 426 (2009).

²⁹ *People v. Roble*, 663 Phil. 147, 157 (2011).

corpus delicti.³⁰ The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself and its offer as evidence.

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.³¹

Apart from showing the presence of the above-cited elements, it is of utmost importance to likewise establish with moral certainty the identity of the confiscated drug.³² To remove any doubt or uncertainty on the identity and integrity of the seized drug, it is imperative to show that the substance illegally possessed and sold by the accused is the same substance offered and identified in court.³³ This requirement is known as the chain of custody rule under R.A. No. 9165 created to safeguard doubts concerning the identity of the seized drugs.³⁴

Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.³⁵ Under Sec. 21 of R.A. No. 9165:

(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.³⁶

The chain of custody rule was further expounded under Sec. 21(a), Art. II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165:

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

³⁰ *Id.*

³¹ *People v. Climaco*, 687 Phil. 593, 603 (2012), citing *People v. Alcuizar*, 662 Phil. 794, 808 (2011).

³² *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

³³ See *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308.

³⁴ *Supra* note 31; citing *Mallillin v. People*, 576 Phil. 576 (2008).

³⁵ Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

³⁶ R.A. No. 9165, Sec. 21 (1).

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[.]

Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of, and photograph, the seized drugs in the presence of (a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (b) a representative from the media (c) a representative from the DOJ, and (d) an elected public official. These four witnesses must all sign the copies of the inventory and obtain a copy thereof.

It is worthy to note that R.A. No. 10640,³⁷ which amended Sec. 21 of R.A. No. 9165 and became effective on July 23, 2014,³⁸ requires only three witnesses to be present during the inventory and taking of photographs of the seized evidence, namely: a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (b) an elected public official, and (c) a representative of the National Prosecution Service or the media.

In the instant case, since the offenses charged were committed on June 20, 2014, the provisions of Sec. 21 of R.A. No. 9165 and its IRR shall apply. Thus, the four witnesses mandated by law to be present during the inventory and taking of photographs must be complied with.

The apprehending team's failure to strictly comply with Sec. 21 of R.A. No. 9165 is fatal to the prosecution's case.

In this case, no representative from the DOJ was present at the time of the physical inventory, marking, and taking of photographs of the evidence seized from appellant at the barangay hall. SPO1 Basang testified that only

³⁷ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

³⁸ OCA Circular No. 77-2015.

Acuña and Barquilla, together with appellant and other police operatives, were present at the time of its marking at the Barangay Hall of Tumana.

CROSS-EXAMINATION

Atty. Galit:

x x x x

- Q: Mr. Witness, you said that you conducted an inventory of evidence in the Barangay Hall, who were present while you were conducting the inventory of evidence?
- A: Councilor Ronnie Acuña, [m]edia [r]epresentative, the suspect, myself, and other fellow operatives, Sir.³⁹

Nevertheless, there is a saving clause under the IRR of R.A. 9165 in case of non-compliance with the chain of custody rule. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.⁴⁰

In this case, however, **the prosecution offered no justification as to the absence of a representative from the DOJ.** The prosecution did not even recognize their procedural lapses or give any justifiable explanation on why the apprehending team did not conduct the inventory, marking, and taking of photographs of the seized evidence in the presence of a DOJ representative.

As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.⁴¹ The presence of the four witnesses mandated by Sec. 21, Art. II of R.A. No. 9165 safeguards the accused from any unlawful tampering of the evidence against him.

Moreover, in the case at bar, the inventory, marking, and taking of photographs of the confiscated items were not conducted immediately at the

³⁹ TSN, June 16, 2016, p. 23.

⁴⁰ *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, G.R. No. 206888, July 4, 2016, 789 Phil. 70, 80 (2016).

⁴¹ *Supra* note 33.

place of arrest but at the Barangay Hall of Tumana. SPO1 Basang explained that their team leader decided to conduct the inventory at the barangay due to the dark lighting conditions at the place of arrest and because appellant's relatives were causing a commotion at the time.

The IRR of R.A. No. 9165 enumerates alternative places for conducting the inventory of the seized evidence, that is, at the nearest police station or nearest office of the apprehending officer/team. However, the requirement of having the required witnesses to be physically present not only during the inventory of the seized evidence but also at the time or near the place of apprehension, is indispensable. In *People v. Tomawis*,⁴² the Court elucidated on the rationale of the law in mandating the presence of the required witnesses at the time or near the place of apprehension:

x x x x. The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.⁴³

Here, SPO1 Basang testified that Acuña and Barquilla were present only at the barangay hall, where the other pieces of evidence confiscated from appellant were inventoried, marked, and photographed. They were mere witnesses to the inventory of the seized items. They had no knowledge whether the items seized were in fact confiscated from appellant or even any prior knowledge on the buy-bust operation conducted by the team of P/Insp. Flores and SPO1 Basang.

The practice of police operatives of not bringing to the intended place of arrest the witnesses required by law does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. They must not merely be called to witness the inventory, marking, and taking of photographs of the confiscated evidence.⁴⁴

Consequently, the signatures of Acuña and Barquilla on the inventory form are rendered useless. The intent of the provisions of the law – to ensure the prevention and elimination of any possibility of tampering, alteration, or substitution, as well as the presentation in court of the drug that was confiscated at the time of apprehension of the accused⁴⁵ – was not carried out in the instant case. Indeed, it is as if there were no witnesses to the

⁴² G.R. No. 228890, April 18, 2018.

⁴³ Id.

⁴⁴ Id.

⁴⁵ *People v. Nepomuceno*, G.R. No. 216062, September 19, 2018.

inventory and marking of the evidence against the accused, which is a total disregard of the requirements of Sec. 21, Art. II of R.A. No. 9165.

The links in the chain of custody were not properly established by the prosecution.

Aside from the proper justification regarding the lack of witnesses in the inventory and photography of the seized items, it is also required that the prosecution prove the preservation of the integrity and evidentiary value of the confiscated items. To establish this, the proper chain of custody of the seized items must be shown. The Court explained in *Mallillin v. People*⁴⁶ how the chain of custody or movement of the seized evidence should be maintained and why this must be shown by evidence, *viz*:

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 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. 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.⁴⁷

In *People v. Kamad*⁴⁸ and *People v. Dahil, et al.*,⁴⁹ the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

In the case at bench, aside from non-compliance with the mandatory rules in inventory and photography of the seized items, the Court finds that

⁴⁶ Supra note 34.

⁴⁷ Id. at 587.

⁴⁸ 624 Phil. 289, 304 (2010).

⁴⁹ 750 Phil. 212, 225 (2015).

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the second, third, and fourth links in the chain of custody were not clearly established by the prosecution.

Second link

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer.⁵⁰ The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing.⁵¹ Thus, the investigating officer's possession of the seized drugs must be documented and established.

Here, the name of the investigator was neither identified nor mentioned by the prosecution. Glaringly, the Chain of Custody Form⁵² did not reflect the investigating officer's name and signature. However, SPO1 Basang testified that there was an alleged investigator in the case, to wit:

DIRECT EXAMINATION

ACP Songco

x x x x

Q: What did you do next, if any Mr. Witness, after you prepared the Chain of Custody Form?

A: Our Investigator prepared a request for laboratory examination on the seized evidence and a request for drug test on the arrested person to the PNP Crime Laboratory for the evidence I recovered from the person I arrested.⁵³

Upon review of the records, it was P/Insp. Flores who prepared the requests for laboratory examination. *Ergo*, SPO1 Basang was possibly referring to P/Insp. Flores as the investigator of the case. However, the Court cannot correctly determine whether there was an actual turnover of the seized items by SPO1 Basang to P/Insp. Flores as the investigating officer when the latter conducted his investigation. The Court is thus forced to resort to guesswork as to the handling of the seized evidence. It is improbable for an investigator in a drug-related case to effectively and

⁵⁰ Id. at 235.

⁵¹ Id.

⁵² Records, p. 11.

⁵³ TSN, June 16, 2016, p. 14.

properly perform his work, and to accomplish the necessary documents for the transfer of evidence, without having custody of the seized items.⁵⁴

Assuming that P/Insp. Flores did take possession of the seized drug as the investigating officer, then it is highly contrary and fatal to SPO1 Basang's testimony that he kept the seized items from the time of appellant's arrest until the turnover of the said items to the forensic chemist. As held in *People v. Remigio*,⁵⁵ the apprehending officer's act of keeping the seized evidence until its transfer to the forensic chemist and his failure to transfer the seized evidence to the investigating officer are considered breaks in the chain of custody. In any case, it is clear that the second link, which is the turnover by the apprehending officer of the illegal drugs to the investigating officer, was entirely lacking and the prosecution did not even bother to explain its deficiency.

Third Link

The third link in the chain of custody is the delivery by the investigating officer of the illegal drug to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.⁵⁶

In this case, SPO1 Basang testified that he was the one who personally delivered the seized items to PCI Libres. However, the evidence presented by the prosecution does not actually identify who received the drug from SPO1 Basang. In the request for laboratory examination, there was no name indicated therein as to who received the confiscated drugs from SPO1 Basang.⁵⁷ There was likewise an absence of description as to the condition of the seized drugs when PCI Libres received it, or the way it was handled while the drugs were in her possession. The prosecution could have presented PCI Libres to clarify who actually received the seized drugs in the forensic laboratory but it failed to do so. This leaves the Court to conclude that there are serious doubts on the integrity and evidentiary value of the seized evidence against the appellant in the third link.

In *People v. Beran*,⁵⁸ there was also an irregularity in the third link. The police officer, who both served as apprehending and investigating officer, claimed that he personally took the drug to the laboratory for testing, but there was no showing of who received the drug from him. The records therein also showed that he submitted the sachet to the laboratory for testing

⁵⁴ Supra note 49 at 235.

⁵⁵ 700 Phil. 452 (2012).

⁵⁶ Supra note 49 at 236.

⁵⁷ Records, p. 7.

⁵⁸ *People v. Beran*, 724 Phil. 788 (2014).

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only on the following day, without explaining how he preserved his exclusive custody thereof overnight. All those facts cast serious doubt that the integrity and evidentiary value of the seized item were not fatally compromised. Hence, the accused therein was acquitted.

Fourth Link

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.⁵⁹ In this case, there was no testimonial or documentary evidence on how PCI Libres kept the seized items while it was in her custody until it was presented in court. PCI Libres did not testify in court but the parties entered into general stipulations of her testimony. The stipulations are replete of information regarding the condition of the seized item while in her custody or that there was no opportunity for someone not in the chain to have possession thereof. The prosecution could have presented the forensic chemist in order to testify on the safekeeping of the drugs but, again, failed to do so.

Similarly, in *People v. Gutierrez*,⁶⁰ there were also inadequate stipulations as to the testimony of the forensic chemist. In said case, no explanation was given regarding the chemist's custody in the interim - from the time it was turned over by the investigator for laboratory examination. The records also failed to show what happened to the allegedly seized *shabu* between the turnover by the chemist to the investigator and its presentation in court. Thus, since no precautions were taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof, the accused therein was acquitted.

Further, the entire procedure of the chain of custody was not even discussed by SPO1 Basang, the arresting officer, in his affidavits of arrest. In *People v. Lim*,⁶¹ the Court declared that in order to weed out early on from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, the following should be enforced as a mandatory policy with regard to drug-related cases, to wit:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the

⁵⁹ Supra note 49 at 237.

⁶⁰ 614 Phil. 285 (2009).

⁶¹ G.R. No. 231989, September 4, 2018.

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steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

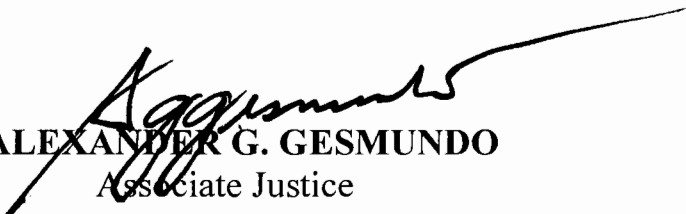
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.⁶²

In view of the foregoing, the Court concludes that there was no proper inventory, marking, and taking of photographs of the seized items. Moreover, the prosecution gravely failed to establish all the links in the chain of custody to establish the integrity and evidentiary value of the seized items. Given the procedural lapses, serious uncertainty hangs over the identification of the *corpus delicti* which the prosecution introduced into evidence. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused.⁶³

WHEREFORE, the appeal is **GRANTED**. The January 3, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09030 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of Macmac Bangcola y Maki. He is hereby **ACQUITTED** of the crimes charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this Decision and to inform this Court of the date of the actual release from confinement of Macmac Bangcola y Maki within five (5) days from receipt hereof.

SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

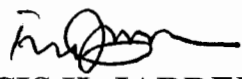
⁶² Id.

⁶³ Supra note 16.

WE CONCUR:

(On official business)
LUCAS P. BERSAMIN
Chief Justice



MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson


FRANCIS H. JARDELEZA
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

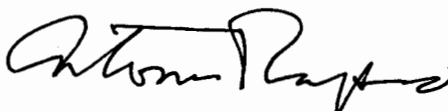
ATTESTATION

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.


MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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