



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 227398

Present:

- versus -

CARPIO, J., *Chairperson*,  
PERALTA,  
MENDOZA,  
LEONEN, and  
MARTIRES, JJ.

ANASTACIO HEMENTIZA y  
DELA CRUZ,  
Accused-Appellant.

Promulgated:

122 MAR 2017

X ----- X

DECISION

MENDOZA, J.:

This is an appeal from the October 16, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06847, which affirmed the January 29, 2014 Decision<sup>2</sup> of the Regional Trial Court, Branch 73, Antipolo City (RTC) in Criminal Case Nos. 03-25726 and 03-25727, finding Anastacio Hementiza y Dela Cruz (*accused-appellant*) guilty of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

*The Antecedents*

On May 27, 2003, accused-appellant was charged in two (2) separate Informations before the RTC. In Criminal Case No. 03-25726, accused-appellant was charged with possession of *shabu* in violation of Section 11, Article II of R.A. No. 9165. The Informations read:

<sup>1</sup> Penned by Associate Justice Manuel M. Barrios with Associate Justice Ramon M. Bato, Jr. and Associate Justice Maria Elisa Sempio Diy, concurring; *rollo*, pp. 2-10.

<sup>2</sup> Penned by Executive Judge Ronaldo B. Martin; *CA rollo*, pp. 36-41.

That on or about the 25<sup>th</sup> day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law, did, then and there wilfully, unlawfully and feloniously have in his possession, custody and control two (2) heat sealed transparent plastic sachets containing 0.03 and 0.06 gram of white crystalline substance or with total weight of 0.09 gram, which after the corresponding laboratory examination conducted thereon by the PNP Crime Laboratory both gave positive results to the test for Methylamphetamine Hydrochloride, also known as “shabu,” a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>3</sup>

In Criminal Case No. 03-25727, accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165 for the sale of *shabu*. The Information states:

That on or about the 25<sup>th</sup> day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not having been authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there wilfully, unlawfully and feloniously sell, deliver and give away to PO2 Rache E. Palconit, who acted as a poseur-buyer, one (1) heat sealed transparent plastic sachet containing 0.05 gram of white crystalline substance, for and in consideration of the sum of P200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave a positive result to the test for Methylamphetamine Hydrochloride, also known as “shabu,” a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>4</sup>

On July 22, 2003, accused-appellant was arraigned and he pleaded not guilty. Thereafter, trial ensued with the prosecution presenting Forensic Chemist P/Insp. Sharon Lontoc Fabros (*Fabros*), PO2 Rache E. Palconit (*Palconit*) and Barangay Captain, Dr. Rina Gabuna Junio (*Dr. Junio*), as its witnesses.

*Version of the Prosecution*

On May 25, 2003, at around 1:15 o'clock in the morning, Palconit, SPO2 Gerry Abalos (*Abalos*), PO2 Manuel Bayeng (*Bayeng*), and PO3 Russel Medina (*Medina*), conducted a buy-bust operation at Sitio Lower Sto. Niño, Barangay Sta. Cruz, Antipolo City. A confidential informant (*CI*) told them that a certain Anastacio was peddling drugs in the area. A buy-bust team was formed with Abalos as the team leader and Palconit as the poseur-buyer. Abalos marked two (2) P100.00 bills for the operation. After briefing

<sup>3</sup> CA rollo, p. 36.

<sup>4</sup> Id. at 37.

and coordination with the local police, the team was dispatched to Barangay Sta. Cruz. Upon arrival, the CI pointed to their target person. Palconit approached accused-appellant and asked if he could buy shabu. After receiving the marked money, accused-appellant handed to Palconit one (1) small heat-sealed plastic sachet containing *shabu*. At that point, Palconit scratched his head to signal that the sale was consummated, and the rest of the team rushed to the scene. Abalos introduced themselves as police officers and immediately frisked accused-appellant. Abalos recovered the marked money and two (2) other plastic sachets containing *shabu* from the left pocket of accused-appellant's pants. Thereafter, accused-appellant and the seized items were brought to the Philippine Drug Enforcement Agency (PDEA) Office in Barangay San Roque, Antipolo City. The seized items were turned over to the case investigator who prepared the corresponding request for laboratory examination. Thereafter, Palconit brought the seized items to the crime laboratory. After examination, Fabros issued a report confirming that the crystalline substance in the sachets were positive for *methamphetamine hydrochloride* or *shabu*.

#### *Version of the Defense*

In his defense, accused-appellant alleged that on May 25, 2003 at around 1:15 o'clock in the morning, he was playing billiards at Sitio Lower Sto. Niño when three (3) armed men suddenly arrived and pointed a gun at him. Without saying anything, the men frisked and handcuffed him but found nothing illegal on him. He was arrested and brought to an office in Lores where he was detained, interrogated, and forced to admit a wrongdoing. He was also asked to point to other persons so that he could be released.

#### *The RTC Ruling*

In its January 29, 2014 decision, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes of violation of Sections 5 and 11, Article II of R.A. No. 9165. Accordingly, the trial court sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 for violation of Section 5 of R.A. No. 9165. It also sentenced him to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day to twenty (20) years and to pay a fine of ₱300,000.00 for violation of Section 11 of R.A. No. 9165.

The RTC held that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated did not automatically render accused-appellant's arrest illegal or the items seized from him as inadmissible for it was shown that the integrity and evidentiary value of the seized items were preserved by the apprehending officers. It opined that the witnesses presented by the

prosecution successfully established the chain of custody of the seized illegal drugs. The *fallo* reads:

WHEREFORE, premises considered, accused Anastacio Hementiza y Dela Cruz is hereby found guilty beyond any shadow of a doubt of the offense charged in the Informations and is sentenced to the penalty of Life Imprisonment in Criminal Case No. 03-25727 with a fine of Php 500,000.00 and in Criminal Case No. 03-25726, the same accused is hereby sentenced to suffer an Imprisonment of Twelve (12) years and one (1) day to twenty (20) years with a fine of Php300,000.00 as provided for under Sec. 11 Par. (3) of RA 9165, as amended.

Anastacio Hementiza y Dela Cruz is to be promptly committed to the National Bilibid Prisons for immediate service of his sentence.

The seized specimens subject of the instant cases are ordered destroyed in the manner provided by law.

SO ORDERED.<sup>5</sup>

Aggrieved, accused-appellant appealed before the CA.

### *The CA Ruling*

In its October 16, 2015 decision, the CA affirmed the conviction of accused-appellant. It explained that the police witnesses had adequately established the conduct of the buy-bust operation which resulted in the consummated sale of the illegal drugs and the recovery of two (2) sachets and the marked money in his possession. The CA added that prior surveillance of the suspected offender was not a prerequisite for the validity of a buy-bust operation and that failure to strictly comply with the provisions of Section 21 (1), Article II of R.A. No. 9165, on the handling of confiscated illegal drugs, as well as its IRR, was not fatal and would not render accused-appellant's arrest illegal or the items seized from him inadmissible. The CA disposed the appeal in this wise:

WHEREFORE, finding no reversible error, the appeal is DENIED. The Decision dated 29 January 2014 of the Regional Trial Court, Branch 73, Antipolo City is AFFIRMED.

SO ORDERED.<sup>6</sup>

Hence, this appeal.

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<sup>5</sup> Id. at 41.

<sup>6</sup> *Rollo*, p. 10.

### ISSUE

#### **WHETHER THE GUILT OF THE ACCUSED FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.**

In a Resolution,<sup>7</sup> dated December 7, 2016, the Court required the parties to submit their respective supplemental briefs, if they so desired. In his Manifestation in lieu of Supplemental Brief,<sup>8</sup> dated February 28, 2017, accused-appellant manifested that he was adopting his Appellant's Brief filed before the CA as his supplemental brief for the same had adequately discussed all the matters pertinent to his defense. In its Manifestation,<sup>9</sup> dated February 6, 2017, the Office of the Solicitor General (*OSG*) stated that all matters and issues raised by accused-appellant had already been discussed in its Brief before the CA and asked that it be excused from filing its supplemental brief.

### The Court's Ruling

The Court grants the appeal.

The elements necessary in every prosecution for the illegal sale of dangerous drugs 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. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged.<sup>10</sup>

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.<sup>11</sup>

The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself. In *People v. Alcuizar*,<sup>12</sup> the Court held:

The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction

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<sup>7</sup> Id. at 16-17.

<sup>8</sup> Id. at 23-24.

<sup>9</sup> Id. at 18-19.

<sup>10</sup> *People v. Roble*, 663 Phil. 147, 157 (2011).

<sup>11</sup> *People v. Alcuizar*, 662 Phil. 794, 808 (2011).

<sup>12</sup> Id.

under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drugs unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.<sup>13</sup>

Thus, the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,<sup>14</sup> which implements R.A. No. 9165, defines chain of custody as follows:

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

In *Mallillin v. People*,<sup>15</sup> the Court explained the importance of the chain of custody:

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.

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<sup>13</sup> *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

<sup>14</sup> Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

<sup>15</sup> 576 Phil. 576 (2008).



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[.]

Strict compliance with the chain of custody requirement, however, is not always the case. Hence, the IRR of R.A. No. 9165 provides:

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.** [Emphasis supplied]

In the case at bench, the prosecution failed to demonstrate substantial compliance by the apprehending officers with the safeguards provided by R.A. No. 9165 as regards the rule on chain of custody. To begin with, the records are bereft of any showing that an inventory of the seized items was made. Neither does it appear on record that the apprehending team photographed the contraband in accordance with law.

Further, *People v. Dahil*<sup>17</sup> restated 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.

*First Link: Marking of the Drugs  
Recovered from the Accused by the  
Apprehending Officer*

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. “Marking” means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because the succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.<sup>18</sup>

Still, there are cases when the chain of custody rule is relaxed such as when the marking of the seized items is allowed to be undertaken at the

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<sup>17</sup> 745 SCRA 221 (2015).

<sup>18</sup> *Id.* at 240-241.

police station rather than at the place of arrest for as long as it is done in the presence of the accused in illegal drugs cases.<sup>19</sup>

In this case, Palconit claimed that he had placed his initials on the seized items. Based on his testimony, it is clear that the marking was not immediately done at the place of seizure; instead, the markings were only placed at the PDEA office, for which the prosecution did not offer any justifiable reason. Even if the Court glosses over this lapse, still, it could not be said that the integrity and evidentiary value of the seized items were preserved. For one, neither in the direct examination nor in the cross-examination of Palconit was it mentioned that the markings were made in the presence of accused-appellant or his representatives. He merely testified that he placed the markings at the PDEA office, without any allusion to the identities of the persons who were present when he did the markings.

Moreover, in the Incident Report<sup>20</sup> as well as in the Affidavit of Arrest,<sup>21</sup> the specific markings made on the seized items were not mentioned. The same documents merely specified that three (3) small heat-sealed transparent plastic bags containing suspected *methamphetamine hydrochloride* of undetermined quantity were found in accused-appellant's possession. Considering that the apprehending officers did not mark the sachets of illegal drugs at the place of seizure, then, it logically follows that the marking should have been their foremost priority and should have been made prior to writing the incident report and executing the affidavit of arrest. It, therefore, behooves the Court how Palconit could have said that he placed the markings at the PDEA office, but no mention of the same whatsoever was made in both the incident report and in the affidavit of arrest. If the sachets of illegal drugs were already marked, then there would have been no reason for its non-inclusion in the aforesaid documents. Thus, the Court can only guess the time when the markings were made and whether they were placed before the preparation of the incident report and the affidavit of arrest.

To make matters worse, from the place of seizure to the PDEA office, the seized items were not marked. It could not, therefore, be determined how the unmarked drugs were transported and who took custody of them while in transit.

Unfortunately, the direct examination of Palconit left much to be desired for it offered no explanation and justification for these lapses. At most, what can be gleaned is the prosecution's lack of zealotry and interest in ensuring the conviction of accused-appellant despite the time and resources at its disposal, viz:

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<sup>19</sup>*People v. Resurrecion*, 618 Phil 520 (2009).

<sup>20</sup> Records, p. 6-7.

<sup>21</sup> *Id.* at 8-9.

Prosecutor Sampayo: When the marked money was recovered and two other sachets were recovered, what did you do?

Palconit: The suspect was brought to the PDEA office.

Prosecutor Sampayo: What did you do at the PDEA office?

Palconit: We turned over the confiscated evidence to the investigator and we informed our CO that the operation was positive.

Prosecutor Sampayo: What were the confiscated items which were turned over?

Palconit: Buy bust money, one sachet which I bought and two other sachets which were recovered from the suspect.

Prosecutor Sampayo: What was done with the confiscated sachets, the one that was bought and the two others which were recovered from the target person?

Palconit: When we arrived at the office, we made a request for laboratory examination.

Prosecutor Sampayo: What did you do with the items?

Palconit: We placed markings on the confiscated items.

Prosecutor Sampayo: Do you remember what marking was placed?

Palconit: Yes, ma'm, REP-1, REP-2, REP-3.

Prosecutor Sampayo: What are these markings about?

Palconit: Those are my initials, Rache E. Palconit.

Prosecutor Sampayo: Where did you put the markings?

Palconit: At the sachets.

Prosecutor Sampayo: What sachets are you talking about?

Palconit: The sachet that I bought and the sachets that were recovered.

Prosecutor Sampayo: What marking was placed on the specimen found on his possession?

Palconit: REP-2 and REP-3.

Prosecutor Sampayo: After putting the markings, what did you do?

Palconit: We brought it to the crime laboratory.

Prosecutor Sampayo: Who personally brought it?

Palconit: Me.<sup>22</sup>

In *People v. De La Cruz*,<sup>23</sup> where the marking of the seized items was made at the police station, and without any showing that the same had been done in the presence of the accused or his representatives, the Court concluded that the apprehending team's omission to observe the procedure

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<sup>22</sup> TSN, March 23, 2006, p. 8.

<sup>23</sup> 591 Phil. 259 (2008).

outlined by R.A. No. 9165 in the custody and disposition of the seized drugs significantly impaired the prosecution's case.

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction.<sup>24</sup> While law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is merely just that - a mere presumption disputable by contrary proof and which when challenged by evidence cannot be regarded as binding truth.<sup>25</sup>

*Second Link: Turnover of the Seized Drugs by the Apprehending Officer to the Investigating Officer*

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.<sup>26</sup>

Here, the identity of the investigating officer was unknown.

Prosecutor Sampayo: What did you do at the PDEA office?

Palconit: We turned over the confiscated evidence to the investigator and we informed our CO that the operation was positive.

Prosecutor Sampayo: What were the confiscated items which were turned over?

Palconit: Buy bust money, one sachet which I bought and two other sachets which were recovered from the suspect.<sup>27</sup>

It is unlikely that Palconit did not know the officer to whom he supposedly turned over the seized drugs. Surely, this investigating officer

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<sup>24</sup> *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 570.

<sup>25</sup> *People v. Sabdula*, 733 Phil. 85, 100-101 (2014).

<sup>26</sup> *Supra* note 17 at 244.

<sup>27</sup> TSN, March 23, 2006, p. 7.

worked with him in the same office. Indeed, the apprehending officer and investigating officer might be one and the same person. If that was the case, however, then there would have been no need to say that Palconit turned over the seized items to the investigator. He could have simply said that he was the one who conducted the investigation and prepared the necessary documents for the filing of a criminal case against accused-appellant.

Similarly, in *People v. Nandi*,<sup>28</sup> where the apprehending officer was unable to identify the investigating officer to whom he turned over the seized items, the Court held that such circumstance, when taken in light of the several other lapses in the chain of custody that attend the case, raises doubts as to whether the integrity and evidentiary value of the seized illegal drugs had been preserved.

*Third Link: Turnover by the Investigating Officer of the Illegal Drugs to the Forensic Chemist*

From the investigating officer, the illegal drug is delivered 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.<sup>29</sup> In this case, it was uncertain who received the seized items when it was brought to the forensic laboratory, to wit:

Prosecutor Sampayo: When the marked money was recovered and two other sachets were recovered, what did you do?

Palconit: The suspect was brought to the PDEA office.

Prosecutor Sampayo: What did you do at the PDEA office?

Palconit: We turned over the confiscated evidence to the investigator and we informed our CO that the operation was positive.

Prosecutor Sampayo: What were the confiscated items which were turned over?

Palconit: Buy bust money, one sachet which I bought and two other sachets which were recovered from the suspect.

Prosecutor Sampayo: What was done with the confiscated sachets, the one that was bought and the two others which were recovered from the target person?

Palconit: When we arrived at the office, we made a request for laboratory examination.

Prosecutor Sampayo: What did you do with the items?

Palconit: We placed markings on the confiscated items.<sup>30</sup>

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<sup>28</sup> 639 Phil. 134 (2010).

<sup>29</sup> Supra note 17 at 245.

<sup>30</sup> TSN, March 23, 2006, p. 8.

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Prosecutor Sampayo: After putting the markings, what did you do?

Palconit: We brought it to the crime laboratory.

Prosecutor Sampayo: Who personally brought it?

Palconit: Me.

Prosecutor Sampayo: Why did you bring it to the crime laboratory.

Palconit: For laboratory examination.<sup>31</sup>

There are several unexplained and doubtful points in this step.

*First*, Palconit testified that he placed the markings on the sachets upon arrival at the office. Then, he turned over the seized items to the investigator. In the latter part of his testimony, however, he said that after placing the markings, he brought the illegal drugs to the crime laboratory. The circumstances surrounding the custody of the illegal drugs, from the time they were brought to the PDEA office up to their turnover to the forensic laboratory, are all muddled. Moreover, it is unclear whether another officer intervened in the handling of the illegal drugs or it was only Palconit himself who placed the markings and delivered the illegal drugs to the forensic chemist.

*Further*, a perusal of the records shows that the request for laboratory examination<sup>32</sup> was prepared and signed by a certain Police Chief Inspector Raul Loy Bargamento (*Bargamento*), who had necessarily taken custody of the seized items at some point in order to execute the request for laboratory examination. Yet, Palconit did not even bother to mention Bargamento in his testimony. The prosecution would have the Court guess (1) whether Bargamento was the same person to whom Palconit turned over the seized items and (2) whether Bargamento was the one who handed Palconit the seized items for delivery to the forensic laboratory. Hence, the identities of the officers who had custody of the illegal drugs, even for momentary periods, are open to question.

*Finally*, Fabros testified that their office received the request for laboratory examination on May 25, 2003 at three (3) o'clock in the afternoon. The request for laboratory examination<sup>33</sup> indicated that the same was received by Fabros. It is worthy to note, however, that she did not affix her signature thereon. Moreover, in their testimonies, neither Palconit nor

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<sup>31</sup> Id. at 9.

<sup>32</sup> Records, p. 22.

<sup>33</sup> Id.

Fabros identified each other as the person who delivered and received the seized drugs respectively. Hence, for failure of Fabros to mention before the court that she indeed received the seized drugs from Palconit, her name, appearing on the request for laboratory examination, remained to be hearsay.

In *People v. Beran*,<sup>34</sup> the investigator of the case claimed that he personally took the drug to the laboratory for testing, but there was no showing who was the laboratory technician who received the drug from him. The Court noted that there was serious doubt that the integrity and evidentiary value of the seized item had not been fatally compromised.

*Fourth Link: Turnover of the Marked  
Illegal Drug Seized by 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.<sup>35</sup>

In this case, the records are bereft of any evidence as to how the illegal drugs were brought to court. Fabros merely testified that she made a report confirming that the substance contained in the sachets brought to her was positive for *shabu*.

The saving clause in Section 21, IRR of R.A. No. 9165 fails to remedy the lapses and save the prosecution's case. In *People v. Garcia*,<sup>36</sup> the Court stated that "the saving clause applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds." Failure to follow the procedure mandated under R.A. No. 9165 and its IRR must be adequately explained.<sup>37</sup>

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.<sup>38</sup>

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<sup>34</sup>724 Phil. 788 (2014).

<sup>35</sup>Supra note 17 at 247.

<sup>36</sup>599 Phil. 416, 432-433 (2009).

<sup>37</sup>*People v. Lorenzo*, 633 Phil. 393 (2010).

<sup>38</sup>Id. at 403.

In fine, the Court holds that the totality of the evidence presented does not support a finding of guilt with the certainty that criminal cases require. The procedural lapses committed by the apprehending team show glaring gaps in the chain of custody, creating a reasonable doubt on whether the *shabu* seized from accused-appellant was the same *shabu* that were brought to the crime laboratory for chemical analysis, and eventually offered in court as evidence. Hence, the *corpus delicti* has not been adequately proven.

It could be that the accused was really involved in the sale of *shabu*, but considering the doubts engendered by the paucity of the prosecution's evidence, the Court has no recourse but to give him the benefit thereof. 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. Observance of these is necessary to avoid wasting the efforts and the resources in the apprehension and prosecution of violators of our drug laws.<sup>39</sup>

**WHEREFORE**, the appeal is **GRANTED**. The October 16, 2015 Decision of the Court of Appeals in CA-G.R. CR. H.C. No. 06847 is **REVERSED** and **SET ASIDE**. Accused-appellant Anastacio Hementiza y Dela Cruz is hereby **ACQUITTED** of the crimes charged against him and ordered immediately **RELEASED** from custody, unless he is confined for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to immediately implement this decision and to inform this Court of the date of the actual release from confinement of the accused within five (5) days from receipt of a copy of this decision.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

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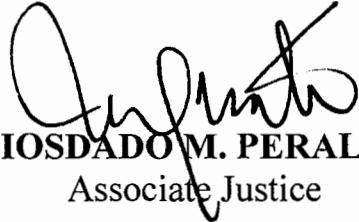
<sup>39</sup>*People v. Sabdula*, 733 Phil. 85, 101 (2014).



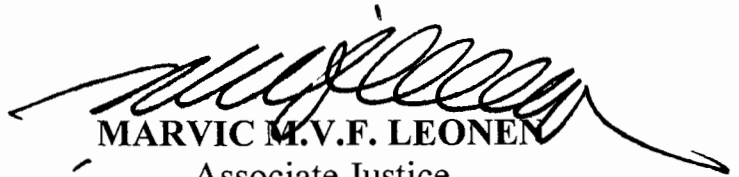
**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice



**SAMUEL R. MARTIRES**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second 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

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