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Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

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PEOPLE OF THE PHILIPPINES, G.R. No. 220142
Plaintiff-appellee,

Present:

-versus-

LEONEN, J., Chairperson,
GESMUNDO,
CARANDANG,
ZALAMEDA., and
GAERLAN, JJ.

RONALD SUATING Y SAYON
ALIAS "BOK",
Accused-appellant.

Promulgated:
January 29, 2020
Misa D C Batt

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DECISION

LEONEN, J.:

Only the police testified for the prosecution. The actual poseur [-] buyer was not presented, and the police officers were 10 meters away. The alleged contraband was laid out on the table when the barangay official came. There was no testimony on the chain of custody from the arresting officers to the persons who tested the alleged contraband.

In contrast, the accused presented five (5) witnesses from the community to prove that the alleged contraband was not taken from the accused, and that no buy-bust operation occurred. The accused testified that when he was searched, they only found two pesos and fifty centavos (P2.50) on his person.

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Yet, the trial court and the Court of Appeals were willing to send this accused to a life in prison and to impose a fine of ₱500,000.00 for allegedly selling a stick of marijuana.

We reverse. Efforts of law enforcers to go after the real drug syndicates are undermined by these obviously fictitious arrests. All it accomplishes is alienate our people, enable corrupt law enforcers, and undermine the confidence of our people—especially those who are impoverished and underprivileged—on our court’s ability to do justice.

Courts must exercise “heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs [for] [t]hese can be readily planted and tampered.”¹

This Court resolves an Appeal² filed by Ronald Suating y Sayon, alias “Bok” (Suating), from the Decision³ of the Court of Appeals in CA-GR CEB HC No. 01702 which affirmed the Regional Trial Court⁴ ruling that he was guilty beyond reasonable doubt of Illegal Sale and Illegal Possession of Dangerous Drugs.⁵

Two separate (2) Informations were filed against Suating for violations of Sections 5⁶ and 11⁷ of Republic Act No. 9165,⁸ otherwise

¹ *Lescano v. People*, 778 Phil. 460, 479 (2016) [Per J. Leonen, Second Division] citing *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

² CA rollo, pp. 87–89.

³ Rollo, pp. 4–15. The Decision dated December 22, 2014 was penned by Associate Justice Edgardo L. Delos Santos (Chairman, now a member of this Court) and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez of the Nineteenth Division of the Court of Appeals, Cebu City.

⁴ CA rollo, pp. 29–38. The Decision dated July 29, 2013 in Criminal Case Nos. 8451–69 and 8452–69 was penned by Presiding Judge Felipe G. Banzon of the Regional Trial Court of Silay City, Branch 69.

⁵ Rollo, p. 14, CA Decision.

⁶ Republic Act No. 9165 (2002), sec. 5, provides:

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 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.

....

⁷ Republic Act No. 9165 (2002), sec. 11, provides:

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:

....

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

known as the Comprehensive Dangerous Drugs Act of 2002. The charging portions of the Informations provided:

Criminal Case No. 8451-69

“That on November 9, 2011 in Silay City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one large stick of marijuana cigarette marked as BOK-1, a prohibited drug to an asset of the Silay City PNP posing as a poseur [-] buyer in exchange for three [3] twenty peso bills with serial numbers RS65451 (sic), RT180921, and RT395576 all marked with the underline in the last digit of each serial numbers.

CONTRARY TO LAW.”

Criminal Case No. 8452-69

“That on November 9, 2011 in Silay City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in possession and control [one] (1) large rolled stick of Marijuana cigarette with a total weight of 0.14 grams marked as BOK-2, a prohibited drug without any license or permit to possess the same.

CONTRARY TO LAW.”⁹

Upon arraignment, Suating pleaded not guilty to the charges.¹⁰ Joint trial on the merits commenced.¹¹

The testimonies of the witnesses¹² for the prosecution corroborated the following account of events:

Acting on a tip from concerned constituents and barangay officials, the Philippine National Police of Silay City (PNP Silay) effected a surveillance to verify whether or not Suating was selling marijuana within

.....
 (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.

⁸ *Rollo*, p. 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *CA rollo*, p. 30.

¹² *Id.* The witnesses for the Prosecution are: Police Chief Inspector Paul Jerome Puentespina, PO2 Christopher Panes, SPO1 Rayjay Rebadomia, Hon. Ireneo Celis, PO2 Reynaldo Bernil, Jose Junsay, Jr., PO2 Ian Libo-on, and PO2 Ariel Magbanua.

the area of Barangay Mambulac Elementary School.¹³ After several test buys, the Information against Suating was confirmed.¹⁴

In coordination with the Regional Office of the Philippine Drug Enforcement Agency (PDEA) in Iloilo City, the police officers planned a buy-bust operation. They prepared three (3) ₱20.00 bills with serial numbers RS654551, RT180921, and RT395576. As marking, they underlined the last digit of each bill's serial number. They subscribed to the marked money before City Prosecutor Ma. Lisa Lorraine Atotubo, and the use of the same was entered in their blotter book under entry number 01723.¹⁵

Before the buy-bust operation, a short briefing commenced. PO2 Reynaldo Bernil (PO2 Bernil) handed the marked money to a confidential asset who was the designated poseur [-] buyer.¹⁶

On the afternoon of November 9, 2011,¹⁷ the operation ensued.

The poseur [-] buyer went to the premises of Barangay Mambulac Elementary School, ahead of the police officers.¹⁸ Shortly thereafter, he called PO2 Bernil when Suating was already "within his sight."¹⁹ The rest of the police officers followed, positioning themselves approximately 10 meters away from the area of operation and about 50 meters away from the school.²⁰

PO2 Bernil was the point person of the entrapment. He saw the poseur [-] buyer approach Suating and engage in a short conversation with him. He also witnessed when Suating left the area of operation, only to return to the poseur [-] buyer after a few minutes. While Suating and the poseur [-] buyer were talking, the latter took out the marked money from his pocket and gave it to Suating. In exchange, Suating handed unknown articles suspected to be marijuana.²¹

After the sale, the poseur [-] buyer left the area. He proceeded to where PO2 Bernil was in order to surrender the large stick of suspected marijuana cigarette bought from Suating. PO2 Bernil then handed the item to PO2 Ian Libo-on (PO2 Libo-on), who marked it with "BOK-1."²²

¹³ Id. at 31.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ *Rollo*, p. 6.

¹⁸ *CA rollo*, p. 31.

¹⁹ Id. at 32.

²⁰ Id.

²¹ Id.

²² Id.

PO2 Bernil and the other police officers immediately moved towards Suating and restrained his hands. After introducing themselves as persons of authority, they apprehended Suating and informed him of his constitutional rights. Suating's father, along with the other unidentified individuals, attempted to stop the arrest but to no avail.²³

Thereafter, the police officers brought Suating to a police station in Silay City, and proceeded to conduct a body search on him in the presence of Kagawad Jose Junsay of Barangay Mambulac. Found in his possession were the marked money used during the operation, together with another large rolled cigarette stick of suspected marijuana, which was marked "BOK-2" by PO2 Libo-on.²⁴

In the presence of an elected official, the police officers inventoried and photographed the confiscated items. After the request letter was prepared, the items were brought to the PNP Crime Laboratory²⁵ of the Negros Occidental Police Provincial Office in Bacolod City.²⁶ Under Chemistry Report No. D-217-2011, Forensic Officer Paul Jerome Puentespina (Forensic Officer Puentespina) examined the seized illicit drugs, which yielded positive for marijuana.²⁷

On the other hand, Suating denied all charges against him and claimed that he was merely framed by the police.²⁸

Suating detailed in his testimony, which the witnesses corroborated,²⁹ that he was allegedly buying fish in the flea market of Barangay Mambulac³⁰ on the day of the buy-bust operation, when a police officer suddenly apprehended him. The police officer brought him to a room in Silay City Police Station where they asked him certain questions. When Barangay Kagawad Junsay arrived, Suating was frisked. However, they were only able to recover two pesos and fifty centavos (P2.50) from his possession. Thereafter, the police officers took his photo, made him sign a document, and later brought him to the Negros Occidental Police Provincial Office where he was made to urinate in a disposable cup.³¹

²³ Id.

²⁴ Id.

²⁵ *Rollo*, p. 7.

²⁶ *CA rollo*, p. 32.

²⁷ *Rollo*, p. 7.

²⁸ Id.

²⁹ Id. The witnesses for the defense were Albert Salonga, Aileen Capote, Luz Maalat, Jenelyn Javellana, and Romeo Suating.

³⁰ *CA rollo*, p. 33.

³¹ *Rollo*, p. 7.

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The Regional Trial Court convicted Suating of the charges.³²

The Regional Trial Court did not find merit in Suating's contention that the buy-bust operation did not happen,³³ specifying how Suating was apprehended through a well-planned entrapment, which was conducted after monitoring and validation by the police officers.³⁴

The Regional Trial Court found the testimonies of police officers Bernil and Libo-on to be "detailed and straightforward[.]"³⁵ Hinging on the presumption of regularity in the performance of their official duties, and in the absence of any convincing proof that they have ill intent to falsely testify against Suating, the trial court upheld the testimonies of the arresting officers.³⁶ The dispositive portion of the trial court Decision read:

WHEREFORE, PREMISES CONSIDERED:

In Criminal Case No. 8451-69, this Court finds accused, Ronald Suating y Sayon a.k.a. "Bok", GUILTY beyond any reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", as his guilt was proven by the prosecution beyond any reasonable doubt.

Accordingly, this Court sentences accused, Ronald Suating y Sayon a.k.a "Bok", to suffer the penalty of Life Imprisonment, the same to be served by him at the National Bilibid Prison, Muntinlupa City, Province of Rizal.

Accused named is, further, ordered by this Court to pay a fine of Five Hundred Thousand (P500,000.00) Pesos, Philippine Currency.

In Criminal Case No. 8452-69, this Court finds accused, Ronald Suating y Sayon a.k.a. "Bok", GUILTY beyond any reasonable doubt of Violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", as his guilt was proven by the prosecution beyond any reasonable doubt.

Accordingly, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences accused, Ronald Suating y Sayon a.k.a. "Bok", to suffer the penalty of imprisonment for a period of [sic] from TWELVE (12) YEARS AND ONE (1) DAY TO FOURTEEN (14) YEARS, the same to be served by him at the National Bilibid Prison, Muntinlupa City, Province of Rizal.

Accused named is, further, ordered by this Court to pay a fine of Three Hundred Thousand (P300,000.00) Pesos, Philippine Currency.

³² CA rollo, pp. 37-38.

³³ Id. at 36.

³⁴ Id. at 34-36.

³⁵ Id.

³⁶ Id.

The two (2) rolled sticks of marijuana cigarettes (Exhibits "H-1" and "H-2", prosecution) are ordered remitted to the office of the Philippine Drug Enforcement Agency (PDEA) at Negros Occidental Provincial Police Office (NOPPO), Camp Alfredo Montelibano, Sr., Bacolod City, for proper disposition.

In the service of the sentences imposed on him by this Court, accused named shall be given full credit for the entire period of his detention pending trial.

NO COSTS.

SO ORDERED.³⁷

On appeal,³⁸ Suating assailed his conviction, asserting that the trial court was mistaken in relying on the weakness of his defense. He insisted that the prosecution failed to establish his guilt beyond reasonable doubt, as the identity of the confiscated illicit drugs were not sufficiently proven due to non-conformity with the provisions of Section 21 of Republic Act No. 9165.³⁹

The Court of Appeals ruled against Suating.⁴⁰

It held that the illegal sale transaction was effectively completed when Suating gave the hand rolled marijuana cigarette to the poseur [-] buyer in exchange for the marked money. As to the elements of illegal possession of dangerous drugs, Suating failed to persuade that he had legal authority to possess the marijuana cigarette found when he was frisked.⁴¹ Moreover, his previous act of selling marijuana to the poseur buyer showed his intention to "freely and consciously"⁴² possess illicit drugs.⁴³

Relative to the alleged non-conformity with the chain of custody, the Court of Appeals underscored that the prosecution was able to prove that there was "no gap or confusion in the confiscation, handling, custody and examination"⁴⁴ of the confiscated illicit drugs. The dispositive portion of its Decision read:

WHEREFORE, the appeal is **DISMISSED**. The Decision dated July 29, 2013 of the Regional Trial Court, Branch 69 of Silay City, in Criminal Case No. 8451-69 to 8452-69, is hereby **AFFIRMED**.

³⁷ Id. at 37-38

³⁸ Id. at 10-28, Brief for Accused-Appellant.

³⁹ *Rollo*, p. 9.

⁴⁰ Id. at 14.

⁴¹ Id. at 10.

⁴² Id.

⁴³ Id.

⁴⁴ Id. at 13.

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SO ORDERED.⁴⁵ (Emphasis in the original)

Hence, this appeal.⁴⁶

On July 27, 2015, the Court of Appeals forwarded the records of this case to this Court⁴⁷ pursuant to its June 10, 2015 Resolution which gave due course to Suating's Notice of Appeal.⁴⁸

In its November 11, 2015 Resolution,⁴⁹ this Court noted the records forwarded by the Court of Appeals. In the same Resolution, the parties were required to file their Supplemental Briefs within 30 days from notice, should they desire to do so. Both parties manifested that they no longer intend to file Supplemental Briefs.⁵⁰

For this Court's resolution is whether or not the guilt of Suating was proven beyond reasonable doubt. Subsumed in the resolution of this issue is whether or not the police officers complied with the chain of custody as provided for under Section 21 of Republic Act No. 9165 and its Implementing Rules.

Suating maintains his innocence.⁵¹

While he concedes that the defense of frame-up and denial is weak, he asserts that this cannot be utilized to further the prosecution's cause, as the latter's evidence "must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of [his] defense."⁵²

Contrary to the ruling of the Court of Appeals,⁵³ Suating claims that the prosecution failed to establish the illegal sale of illicit drugs. Arguing that the police officers were 10 meters away from the area of operation, he insists that it would be impossible for them to observe or even hear what transpired during the alleged transaction.⁵⁴ He then questions why the prosecution failed to present the poseur [-] buyer as witness when only the latter can best ascertain the necessary details surrounding the sale.⁵⁵

⁴⁵ Id. at 14.

⁴⁶ CA *rollo*, pp. 87-89.

⁴⁷ *Rollo*, p. 1.

⁴⁸ CA *rollo*, pp. 94-95.

⁴⁹ *Rollo*, pp. 22-23.

⁵⁰ Id. at 24-28, Manifestation; and 32-34, Manifestation in Lieu of Supplemental Brief.

⁵¹ CA *rollo*, p. 19, Brief for the Accused-Appellant. Suating was firm that he did not commit the charge and that he does not own the articles seized from his possession.

⁵² Id.

⁵³ See *Rollo*, pp. 9-10, CA Decision.

⁵⁴ CA *rollo*, p. 20, Brief for the Accused-Appellant.

⁵⁵ Id. at 21.

As to the chain of custody in handling the seized illicit drugs, Suating underscores the following irregularities on the part of the police officers.⁵⁶

First, he points out that the marking of the large stick of marijuana cigarette was done neither in his presence nor in the presence of third-party witnesses.⁵⁷ Moreover, Suating emphasizes that during the inventory, the confiscated illicit drugs were already laid down on the table when the barangay officials came.⁵⁸ Hence, they have no personal knowledge on how the items were taken from his possession.⁵⁹

Second, he also stresses that since the body search was belatedly undertaken, there is a possibility that the second item might have been merely planted by the police.⁶⁰

Lastly, Suating also stresses his misgivings on whether or not the articles allegedly seized from him were the same ones tested by the forensic chemist in the first place, and eventually, the ones presented in court. He posits that the records failed to provide details on who handled the confiscated illicit drugs after examination and up to the moment they were offered as evidence in court.⁶¹

On the other hand, the Office of the Solicitor General⁶² insists that the statements of PO2 Bernil, who had the opportunity to observe the sale from a distance, duly substantiated the identities of both the buyer and seller.⁶³ That even if the actual dialogue cannot be heard, the actions of both the accused and the poseur [-] buyer supports the conclusion that the sale of illicit drugs did happen.⁶⁴

The Office of the Solicitor General also underscores that the testimony of the poseur [-] buyer is neither necessary for conviction nor crucial to a plausible prosecution of the charges. With the statements made by the police officers, the testimony of the poseur [-] buyer is only corroborative.⁶⁵

As to the alleged broken chain of custody, the Office of the Solicitor General claims that PO2 Bernil and PO2 Libo-on were able to ascertain the identities of the marked seized illicit drugs. Further, non-conformity with Section 21 of Republic Act No. 9165 does not immediately render the

⁵⁶ Id. at 23.

⁵⁷ Id. at 24.

⁵⁸ Id. at 25.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id. at 26.

⁶² Id. at 52-69, Brief for the Appellee.

⁶³ Id. at 58.

⁶⁴ Id. at 59.

⁶⁵ Id. at 60.

apprehension of an accused as illegal, or the articles seized inadmissible.⁶⁶

Finally, it argues that the defense of frame-up necessarily involves the assessment of the credibility and statements of witnesses. It underscores that, as an often repeated rule that higher courts mostly accede to the evaluation of trial courts, which have the opportunity to hear and observe the actuations of witnesses during the proceedings.⁶⁷

I

This Court rules in favor of Suating.

Every criminal proceeding begins with the constitutionally safeguarded presumption that the accused is innocent, which can only be overturn by proof beyond reasonable doubt.⁶⁸ The prosecution has the burden of proof. It must not depend on the weakness of the defense; rather, it must depend on the strength of its own cause.⁶⁹

Proof beyond reasonable doubt, “or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment,” is crucial in overthrowing the presumption of innocence.⁷⁰ In the event that the prosecution falls short of meeting the standard of evidence called for, it would be needless for the defense to offer evidence on its behalf.⁷¹ The presumption of innocence stands, and the accused is accordingly acquitted of the charge.⁷²

In order to guarantee a conviction for illegal sale of dangerous drugs, the prosecution must prove the following:

(1) [T]he 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[.]⁷³

In sum, the occurrence of the sale should be established.

Moreover, the object of the deal should also be offered as evidence and must similarly be proven as the same one confiscated from the

⁶⁶ Id. at 61.

⁶⁷ Id. at 67.

⁶⁸ *People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division].

⁶⁹ *People v. Sanchez*, 590 Phil. 214 (2008) [Per J. Brion, Second Division].

⁷⁰ *Franco v. People*, 780 Phil. 36, 43 (2016) [Per J. Reyes, Third Division].

⁷¹ *People v. Capuno*, 655 Phil. 226 (2011) [Per J. Brion, Third Division].

⁷² *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

⁷³ Id. at 29 citing *People v. Alberto*, 625 Phil. 545 (2010) [Per J. Del Castillo, Second Division].

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accused.⁷⁴

As to the illegal possession of dangerous drugs, the following elements should be ascertained:

[1] [T]he accused was in possession of 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.⁷⁵

In both cases, the confiscated illicit drugs from the accused comprises the *corpus delicti* of the charges,⁷⁶ “i.e., the body or substance of the crime [which] establishes that a crime has actually been committed.”⁷⁷ It is of paramount importance to maintain the integrity and the identity of the *corpus delicti*. Thus, the chain of custody rule warrants that “unnecessary doubts concerning the identity of the evidence are removed.”⁷⁸

The *chain of custody* is “the duly recorded authorized movements and custody of seized drugs. . . of each stage, from the time of seizure [or] confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.”⁷⁹ As a means of verifying evidence, it demands “that the admission of an exhibit be preceded by [proof] sufficient to support a finding that the matter in question is what the proponent claims it to be.”⁸⁰ Accordingly, the prosecution must be able to monitor each of the following links in the chain of custody over the illicit drugs:

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.⁸¹ (Emphasis supplied, citation omitted)

In this case, a prearranged police entrapment led to Suating’s

⁷⁴ Id.

⁷⁵ Id. citing *Reyes v. Court of Appeals*, 686 Phil. 137 (2012) [Per J. Bersamin, First Division].

⁷⁶ Id.

⁷⁷ *People v. Garcia*, 599 Phil. 416, 426 (2009) [Per J. Brion, Second Division].

⁷⁸ *People v. Ismael*, 806 Phil. 21, 29 (2017) [Per J. Del Castillo, First Division] citing *Fajardo v. People*, 691 Phil. 752 (2012) [Per J. Perez, Second Division].

⁷⁹ *People v. Garcia*, 599 Phil. 416, 434 (2009) [Per J. Brion, Second Division].

⁸⁰ *Mallillin v. People*, 576 Phil. 576, 587 (2008) [Per J. Tinga, Second Division] citing *United States v. Howard-Arias*, 679 F.2d 363, 366; and *United States v. Ricco*, 52 F.3d 58.

⁸¹ *People v. Casacop*, 755 Phil. 265, 278 (2015) [Per J. Leonen, Second Division] citing *People v. Remigio*, 700 Phil. 452 (2012) [Per J. Perez, Second Division].

apprehension. However, despite a carefully planned and coordinated buy-bust operation, there were still irregularities committed in the course of the entrapment, which caused apparent lapses to the chain of custody rule.⁸²

For this reason, the identity of the *corpus delicti* was not duly established beyond reasonable doubt. We are no longer certain whether or not the miniscule quantities of 0.15⁸³ and 0.14 grams⁸⁴ of marijuana, presented as evidence against Suating in court, were the very same ones allegedly confiscated from him.

II

The apprehension of Suating and the consequent seizure of illegal drugs in his possession were due to a buy-bust operation conducted by the police officers, after prior surveillance and investigation.⁸⁵ Although this type of operation has been recognized to be effective in eliminating unlawful dealings that are covertly undertaken, it has a notable “downside that has not escaped the attention of the framers of the law.”⁸⁶ Buy-bust operations are vulnerable “to police abuse, the most notorious of which is its use as a tool for extortion.”⁸⁷

Accordingly, police officers are mandated to *strictly* observe the procedure for confiscation and custody of prohibited drugs under Republic Act No. 9165.⁸⁸ The initial procedural safeguard⁸⁹ under Article II, Section 21⁹⁰ thereof provides:

- (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;⁹¹ (Emphasis and underscoring supplied)

In effecting the provisions of Republic Act No. 9165, the

⁸² CA rollo, p. 34.

⁸³ Id. at 35.

⁸⁴ Id. at 36.

⁸⁵ Id. at 34.

⁸⁶ *People v. Garcia*, 599 Phil. 416, 427 (2009) [Per J. Brion, Second Division].

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Republic Act No. 9165 (2002) was the prevailing law before its amendment in 2014 by Republic Act No. 10640.

⁹¹ Republic Act No. 9165 (2002), sec. 21(1).

Implementing Rules and Regulations⁹² read:

- 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;*⁹³ (Emphasis and underscoring supplied)

Notwithstanding the *mandatory* directive of the law as construed from its use of the word “*shall*,”⁹⁴ the police officers miserably failed to comply with the specific procedures in handling the seized marijuana cigarettes allegedly taken from accused-appellant.

The initial link in the chain of custody is the marking of the confiscated illicit drugs. Marking precludes any contamination, switching or planting of evidence. Through it, the evidence is separated from the *corpus* of other similar and correlated evidence, starting from confiscation until its disposal at the close of criminal proceedings.⁹⁵ To be at par with the rule on the chain of custody, the marking of the confiscated articles should be undertaken: (1) in the *presence* of the accused; and (2) *immediately* upon seizure.⁹⁶ This effectively guarantees that the articles seized “are the same items that enter[ed] the chain and are eventually the ones offered in evidence[.]”⁹⁷

In this case, the prosecution offered no reason as to why the marking of the seized marijuana labelled “BOK-1” was *not* immediately done after confiscation, but rather only after a considerable lapse of time, thereto when the poseur buyer was able to leave the area of operation, *away* from the sight of the accused. Moreover, they particularly failed to explain why the police officers could not have promptly marked the item in the presence of Suating, if only to remove any uncertainty that the marijuana cigarette marked by

⁹² Implementing Rules and Regulations of Republic Act No. 9165 (2002).

⁹³ Implementing Rules and Regulations of Republic Act No. 9165 (2002), sec. 21(a).

⁹⁴ *People v. Sanchez*, 590 Phil. 214 (2008) [Per J. Brion, Second Division].

⁹⁵ *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

⁹⁶ *People v. Sanchez*, 590 Phil. 214 (2008) [Per J. Brion, Second Division].

⁹⁷ *Id.* at 541.

PO2 Libo-on, and later subjected to laboratory testing, was the very same one allegedly sold by the accused to the poseur [-] buyer.⁹⁸ Here, an apparent break in the chain of custody already existed before the item was even marked.

Additionally, the prosecution's failure to present the poseur [-] buyer is prejudicial to their cause.⁹⁹ To emphasize, the negotiations during the assailed transaction was intimately between the poseur buyer and Suating. PO2 Bernil, whose exact location from the area of operation was not specifically stated, was merely observing from a distance.¹⁰⁰ Considering that the poseur buyer was the one who has personal knowledge of the illegal sale transaction since he was the one who conducted the same, his testimony is not merely corroborative to that of the police officers.¹⁰¹ The quantity of dangerous drugs here is "so small that the reason for not presenting the poseur [-] buyer does not square with such a miniscule amount."¹⁰²

Moreover, this Court observed that while there was a narration that the confiscated items were inventoried and photographed in the police station,¹⁰³ it is not, however, clear¹⁰⁴ whether such procedures were done in the presence of the required third-party witnesses. To underscore, the prosecution's narrative in the Court of Appeals' Decision states that both the inventory and photograph of the confiscated articles were undertaken before "an *elected public official*."¹⁰⁵ However, in the Appellee's Brief, the mandatory procedures were allegedly made "in the presence of Hon. Ireneo Celis and the Barangay Kagawad."¹⁰⁶

The inconsistencies in the prosecution's narration of events points out that the required attendance of representatives (from both the media and the Department of Justice) during the inventory and photographing was not faithfully complied with, despite having more than enough time to secure their presence during preparation of the allegedly well-planned entrapment. Although their absence does not *per se* make the seized articles inadmissible as evidence, the prosecution must prove that it has acceptable reason for

⁹⁸ See CA rollo, p. 24, Brief for Accused-Appellant.

⁹⁹ *People v. Casacop*, 755 Phil. 265 (2015) [Per J. Leonen, Second Division].

¹⁰⁰ See CA rollo, pp. 31-32.

¹⁰¹ *People v. Casacop*, 755 Phil. 265 (2015) [Per J. Leonen, Second Division].

¹⁰² Id. at 283.

¹⁰³ Rollo, p. 7; and CA rollo, p. 32.

¹⁰⁴ The Decision of the Court of Appeals mentioned that based on the version of the Prosecution, the inventory and photograph of the seized illicit drugs were undertaken in the presence of an elected public official. However, the Court of Appeals seemingly deviated from this thereby stating in its discussion that the inventory was signed by, among others, representatives from the media and the Department of Justice whose names were apparently not disclosed or their circumstances not even elaborated in the records of the case. Also, they were not made as witnesses for the defense.

¹⁰⁵ Rollo, p. 7.

¹⁰⁶ CA rollo, p. 57, Brief for the Appellee. That the inventory and photograph were made in the presence of Celis and a Barangay Kagawad was similarly affirmed in the Brief of the Appellant at pages 16-17 of the CA Rollo.

such failure, or a showing that it exerted “genuine and sufficient effort” to secure their presence,¹⁰⁷ which, in this case, the prosecution failed to do.

The attendance of third-party witnesses is called for in order “to ensure that the chain of custody rule is observed and thus, [it] remove[s] any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case.”¹⁰⁸ Even assuming that the inventory and photographing of the seized articles were made in the presence of two (2) elected public officials—still, the superfluity cannot justify the absence of the other required personalities therein.

With the glaring lapses committed by the police officers, which inevitably tainted the integrity and evidentiary value of the seized illicit drugs, we cannot help but subscribe to Suating’s contention that there is a possibility that the marijuana stick allegedly confiscated from his possession was merely planted, considering that the body search was belatedly done at the police station and only after more than an hour from his apprehension.¹⁰⁹

Finally, the prosecution’s narration of facts ended when the confiscated articles were examined by Forensic Officer Puentespina, whose findings under Chemistry Report No. D-217-2011 provided that the items yielded positive for marijuana.¹¹⁰ This finding, however, leaves the following questions unresolved: (1) did the confiscated drugs remain under Forensic Officer Puentespina’s custody; and (2) were they conveyed to some other place until their presentation in court as evidence? The lack of details on the post-chemical examination custody¹¹¹ of the confiscated illicit drugs creates another substantial gap in the chain of custody rule, particularly on the must accounted “turnover and submission of the marked illegal drug seized by the forensic chemist to the court.”¹¹²

Section 21, Article II of Republic Act No. 9165 “is a matter of *substantive* law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.”¹¹³ Moreover, it “spells out matters that are imperative.”¹¹⁴ Even performing actions, which seemingly near compliance but do not really conform to its requisites, is not enough.¹¹⁵ More so, “when the prosecution

¹⁰⁷ *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 376 (2018) [Per J. Perlas-Bernabe, Second Division].

¹⁰⁸ *Id.* at 375.

¹⁰⁹ *CA rollo*, p. 25.

¹¹⁰ *See CA rollo*, pp. 32–33; and *rollo*, p. 7.

¹¹¹ *See People v. Coreche*, 612 Phil. 1238 (2009) [Per J. Carpio, First Division].

¹¹² *People v. Casacop*, 755 Phil. 265, 278 (2015) [Per J. Leonen, Second Division].

¹¹³ *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 377–378 [Per J. Perlas-Bernabe, Second Division].

¹¹⁴ *Lescano v. People*, 778 Phil. 460, 475 (2016) [Per J. Leonen, Second Division].

¹¹⁵ *Id.*

claims that the seizure of drugs . . . is the result of carefully planned operations, as is the case here.”¹¹⁶

In addition, the prosecution cannot merely assert the saving clause under the Implementing Rules and Regulations of Republic Act No. 9165. Non-conformity with Section 21 of Republic Act No. 9165 is certainly not fatal to the cause of the prosecution, as long as the lapses committed by police officers in the handling of evidence were “recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have [also] been preserved.”¹¹⁷

However, these requirements were not present in this case, since the prosecution, to begin with, failed to acknowledge that there were lapses committed by police officers while dealing with the custody of the seized illicit drugs. These irregularities created major gaps in the chain of custody rule, which, if remained unjustified, is prejudicial to the claim of the prosecution.¹¹⁸

To emphasize, only 0.15¹¹⁹ and 0.14 grams¹²⁰ of marijuana were confiscated from accused-appellant. For this reason, courts must exercise “heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving minuscule amounts of drugs[,] [for] [t]hese can be readily planted and tampered.”¹²¹

III

Contrary to the rulings of both the trial¹²² and appellate court,¹²³ the presumption of regularity in the performance of official duties cannot stand in favor of the police officers on account of the glaring lapses committed in handling the seized illicit drugs. To underscore, this presumption is neither definite nor conclusive. By itself, it cannot overturn the constitutional safeguarded presumption of innocence.¹²⁴ When the assailed official act “is irregular on its face, as in this case, an adverse presumption arises as a matter of course.”¹²⁵

¹¹⁶ Id. at 476.

¹¹⁷ *People v. Sanchez*, 590 Phil. 214, 234 (2008) [Per J. Brion, Second Division].

¹¹⁸ *People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division].

¹¹⁹ CA rollo, p. 35, RTC Decision.

¹²⁰ Id. at 36.

¹²¹ *Lescano v. People*, 778 Phil. 460, 479 (2016) [Per J. Leonen, Second Division] citing *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

¹²² CA rollo, p. 36.

¹²³ Rollo, p. 13.

¹²⁴ *People v. Capuno*, 655 Phil. 226 (2011) [Per J. Brion, Third Division].

¹²⁵ Id. at 244.

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From the standpoint of the accused, we concede that his defense¹²⁶ of denial and frame-up is weak.¹²⁷ In our jurisdiction, these defenses, “like alibi[s], [have] been viewed with disfavor for [these] can easily be concocted and [are] common defense ploy[s] in most prosecutions for violation of the Dangerous Drugs Act.”¹²⁸ However, this cannot strengthen or aid the case of the prosecution. “If the prosecution cannot establish, in the first place, the appellant’s guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf in fact never arises.”¹²⁹ Additionally, “however weak the defense evidence might be, the prosecution’s whole case still falls.”¹³⁰


Considering that non-conformity with Section 21 equates to “failure in establishing [the] identity of *corpus delicti*, [which is] an essential element”¹³¹ of the charges, Suating’s acquittal is therefore in order.

WHEREFORE, the Court of Appeals’ December 22, 2014 Decision in CA-GR CEB HC No. 01702 is **REVERSED** and **SET ASIDE**. Accused-appellant Ronald Suating y Sayon is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision. For their information, copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court is directed to turn over the two (2) sticks of marijuana cigarettes subject of this case to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

¹²⁶ See *Rollo*, p. 7, CA Decision.

¹²⁷ *People v. Sanchez*, 590 Phil. 214 (2008) [Per J.Brion, Second Division].

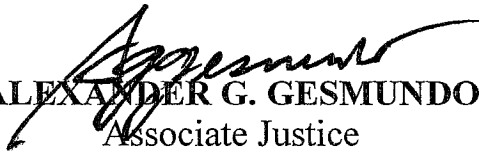
¹²⁸ *Id.* at 244.

¹²⁹ *Id.*

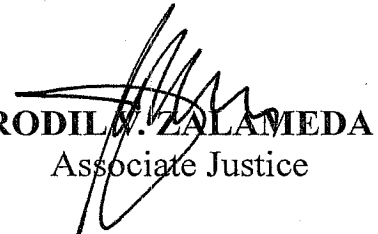
¹³⁰ *Id.*


¹³¹ See *Lescano v. People*, 778 Phil. 460, 470 (2016) [Per J. Leonen, Second Division].

WE CONCUR:


ALEXANDER G. GESMUNDO
 Associate Justice

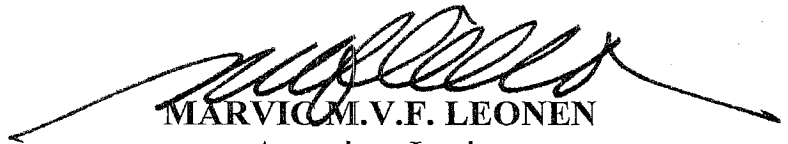

ROSMARI D. CARANDANG
 Associate Justice


RODILA N. ZALAMEDA
 Associate Justice


SAMUEL H. GAERLAN
 Associate Justice

ATTESTATION

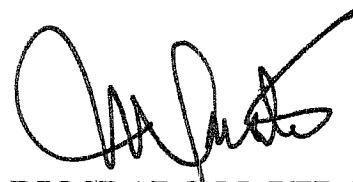
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M. V. F. LEONEN
 Associate Justice
 Chairperson

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.

CERTIFIED TRUE COPY


DIOSDADO M. PERALTA
 Chief Justice

Mis-DC Bett
MISAELO DOMINGO C. BATTUNG III
 Division Clerk of Court
 Division

JUL 03 2020