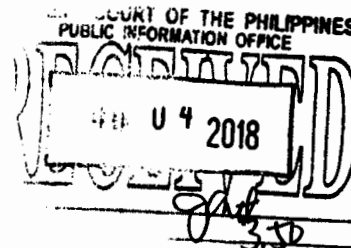




Republic of the Philippines  
**Supreme Court**  
 Manila



**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

**G.R. No. 223515**

Present:

- versus -

**LEONARDO-DE CASTRO,\***  
**PERALTA,\*\***  
**DEL CASTILLO,**  
*Acting Chairperson,\*\**  
**TIJAM, and**  
**GESMUNDO,\*\*\*\* JJ.**

**FRANCIS TABOY<sup>1</sup> y AQUINO,**  
*Accused-Appellant.*

Promulgated:

**JUN 25 2018**

X -----

**DECISION**

**DEL CASTILLO, J.:**

On appeal is the March 27, 2015 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 06096, which affirmed the March 12, 2013 Joint Decision<sup>3</sup> of the Regional Trial Court (RTC) of Camiling, Tarlac,<sup>4</sup> Branch 68 in Criminal Case Nos. 12-01, 12-60, and 12-61. The RTC found accused-appellant Francis Taboy y Aquino (accused-appellant) guilty beyond reasonable doubt of violation of Section 5 (sale of dangerous drugs), Section 12 (possession of drug paraphernalia), and Section 15 (use of dangerous drugs), Article II of Republic Act No. 9165 (RA 9165).<sup>5</sup>

\* On official leave.  
 \*\* Per November 29, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.  
 \*\*\* Per Special Order No. 2562 dated June 20, 2018.  
 \*\*\*\* Per Special Order No. 2560 dated May 11, 2018.  
<sup>1</sup> Tabor in some parts of the records.  
<sup>2</sup> CA rollo, pp. 122-141; penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz.  
<sup>3</sup> Records in Criminal Case No. 12-01, pp. 85-92; penned by Presiding Judge Jose S. Vallo.  
<sup>4</sup> In the dispositive portion of the assailed Decision, the CA referred to the Joint Decision of the RTC Caloocan but its discussions all pertained to the March 12, 2013 Joint Decision of the RTC Camiling Tarlac, Branch 68; CA rollo, p. 140.  
<sup>5</sup> COMPREHENSIVE DANGEROUS DRUGS ACT of 2002.

### ***Factual Antecedents***

Accused-appellant was charged in three separate Informations with illegal sale of *shabu*, illegal possession of drug paraphernalia, and illegal use of prohibited drugs, as follows:

[Criminal Case No. 12-01]

That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed transparent plastic sache[t] containing Methamphetamine Hydrochloride commonly known as 'shabu',<sup>6</sup> a dangerous drug without being authorized by law, weighing 0.051 gram more or less to poseur-buyer POI Jojie S. Navero.

CONTRARY TO LAW.<sup>6</sup>

[Criminal Case No. 12-60]

That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and feloniously, have in possession and control drug paraphernali[a] fit or intended for consuming dangerous drugs such as one (1) disposable lighter, one (1) stainless lighter and one (1) roll of aluminum foil without being authorized by law.

CONTRARY TO LAW.<sup>7</sup>

[Criminal Case No. 12-61]

That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally without being authorized by law, use methamphetamine Hydrochloride, known as shabu[,]<sup>8</sup> a dangerous drug and was found positive for use of said drug after confirmatory test.

CONTRARY TO LAW.<sup>8</sup>

Accused-appellant pleaded "Not Guilty"<sup>9</sup> to these charges against him.

Subsequently, trial on the merits ensued.

### ***Version of the Prosecution***

On January 2, 2012, PO3 Edgar Esteban (PO3 Esteban), PO2 Nestor Agustin (PO2 Agustin), PO1 Alexander Juan (PO1 Juan) and SPO1 Librado

<sup>6</sup> Records in Criminal Case No. 12-01, p. 1.

<sup>7</sup> Records in Criminal Case Nos. 12-60; 12-61, p. 1.

<sup>8</sup> Id. at 2.

<sup>9</sup> Records in Criminal Case Nos. 12-01 pp. 26-27; 12-60; 12-61, pp. 15, 19-A.



Calma (SPO1 Calma) of the Camiling, Tarlac Police Station, along with their confidential asset/informant, conducted a surveillance on accused-appellant. Because of the “positive” result of the surveillance,<sup>10</sup> on January 5, 2012, PO2 Jojie Navero (PO2 Navero) of the same station coordinated with the PDEA,<sup>11</sup> and the *Barangay* Officials of Palimbo-Caarosipan,<sup>12</sup> Camiling Tarlac for the conduct of a buy-bust against accused-appellant.<sup>13</sup>

At about 1:00 p.m. of even date, the informant arrived at the police station.<sup>14</sup> SPO1 Calma, the Team Leader of said station, briefed his team and designated PO2 Navero as poseur buyer in the buy-bust operation. In turn, Chief of Police Diosdado R. Lagasca (Lagasca) gave PO2 Navero ₱500.00, with his (Lagasca) initials, “DRL.” On the other hand, PO3 Esteban, PO2 Agustin, PO1 Juan, and SPO1 Calma were designated as the arresting officers/back-up police for the operation.<sup>15</sup>

At about 3:45 p.m. of the same day, PO2 Navero and the informant proceeded to the house of accused-appellant on Baltazar St., *Barangay* Caarosipan-Palimbo. The back-up police followed them at a distance of 5 to 10 meters.<sup>16</sup> Upon seeing accused-appellant, PO2 Navero and the informant approached him and had a *kaliwaan* – PO2 Navero simply gave the marked money to accused-appellant, and the latter correspondingly handed a sachet of suspected *shabu* to PO2 Navero.<sup>17</sup> PO2 Navero observed that the informant was familiar to accused-appellant, and consequently, there was no need for any communication when he (PO2 Navero) transacted with him (accused-appellant).<sup>18</sup> Afterwards, PO3 Esteban tried to approach accused-appellant but the latter immediately rode his motorcycle and sped away. The police chased and cornered him near the *Barangay* Hall of Palimbo-Caarosipan.<sup>19</sup>

The police then brought accused-appellant to the *Barangay* Hall.<sup>20</sup> In the presence of accused-appellant, *Barangay* Captain Renato de Mayo<sup>21</sup> (de Mayo) and the other police officers, PO2 Navero itemized the money and drug paraphernalia recovered from accused-appellant which consisted of an aluminum foil, plastic sachet, and lighter.<sup>22</sup> PO2 Navero also marked the sachet he bought

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<sup>10</sup> TSN, May 17, 2012, p. 4; November 15, 2012, pp. 3-4.

<sup>11</sup> Philippine Drug Enforcement Agency.

<sup>12</sup> Caarosipan-Palimbo in some parts of the records.

<sup>13</sup> TSN, July 10, 2012, p. 4.

<sup>14</sup> Id.

<sup>15</sup> TSN, May 17, 2012, pp. 2-5.

<sup>16</sup> TSN, May 17, 2012, p. 6; July 10, 2012, p. 5.

<sup>17</sup> TSN, May 17, 2012, pp. 6-7.

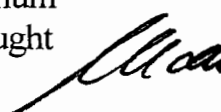
<sup>18</sup> TSN, July 10, 2012, pp. 15-16.

<sup>19</sup> TSN, May 17, 2012, pp. 7-8.

<sup>20</sup> Id. at 8-9.

<sup>21</sup> TSN, October 2, 2012, p. 2.

<sup>22</sup> TSN, July 10, 2012, pp. 10-12, 20-21.



from accused-appellant with “FT/LC,” the respective initials of accused-appellant, and the police’s Team Leader, SPO1 Calma.<sup>23</sup>

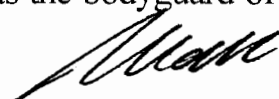
The police officers then brought accused-appellant and the recovered items to the police station where they prepared their joint affidavit. At about 6:00 p.m., PO2 Navero and PO3 Esteban brought accused-appellant and the suspected *shabu* seized from him to the Tarlac Provincial Crime Laboratory.<sup>24</sup> They then submitted a request for laboratory examination to PO1 Carbonel.<sup>25</sup> Meanwhile, PSI Angelito Angel (PSI Angel), the Forensic Chemist of the crime laboratory personally received the specimen which consisted of one heat-sealed transparent plastic sachet containing white crystalline substance with markings “FT/LC” and weighing 0.051 gram.<sup>26</sup>

Upon qualitative examination, the specimen tested positive for methamphetamine hydrochloride. PSI Angel presented said specimen in court and confirmed that it was the same one he received on January 5, 2012.<sup>27</sup> Moreover, the drug test on accused-appellant, under “Chemistry Report No. CDT-004-12 Tarlac,”<sup>28</sup> gave a positive result for the presence of methamphetamine, a dangerous drug.

### *Version of the Defense*

Accused-appellant denied that the police conducted a buy-bust operation against him. He instead narrated the following matters:

After partaking in a drinking spree on the night of January 4, 2012, accused-appellant slept at the house of his sister Jovy Baguio (Jovy) at Baltazar St., and woke up at about 1:00 p.m. the following day. He left Jovy’s house at about 3:00 p.m. and went to the house of his brother, Geronimo. Upon alighting in front of Geronimo’s house, PO1 Juan and another male person approached and poked a gun at him. They took his bag and brought him to Romulo Highway where they forced him to board a car. Accused-appellant was then slapped and hit with a gun by someone whom he recognized as the bodyguard of Mayor Neil T. Agustin (Mayor Agustin) of Camiling, Tarlac.<sup>29</sup>



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<sup>23</sup> Id. at 17.

<sup>24</sup> Id. at 13-14.

<sup>25</sup> No first name found in the records of the case.

<sup>26</sup> TSN, April 24, 2012, pp. 5-7, 12.

<sup>27</sup> Id. at 6-8.

<sup>28</sup> Records in Criminal Case No. 12-60; 12-61, p. 7.

<sup>29</sup> TSN, January 24, 2013, pp. 3-5; October 2, 2012, p. 4.

Accused-appellant was thereafter brought to the police station. The police then found in his bag *shabu*, paraphernalia, foil, plastic, and money. Accused-appellant denied ownership of those items but the Chief of Police told him to admit that he owned them; otherwise, there would be serious consequences. While accused-appellant was still at the station, Mayor Agustin and *Barangay* Captain de Mayo arrived and made him sign a receipt for the confiscated items. Accused-appellant was then brought to Camp Mabulos and a urine sample was taken from him.<sup>30</sup>

### ***Ruling of the Regional Trial Court***

On March 12, 2013, the RTC convicted accused-appellant of illegal sale of drugs. It found that the prosecution established the identity of accused-appellant as seller of the subject *shabu* and PO2 Navero as the buyer; the consideration of such sale in the amount of ₱500.00; and the delivery of the illegal drug to PO2 Navero. It also held that there was no evidence that PO2 Navero and his back-up, PO3 Estaban, had any ill motive in testifying against accused-appellant.

The RTC likewise convicted accused-appellant of illegal possession of drug paraphernalia as he was found to be in possession of the same without any necessary license or prescription. It also convicted accused-appellant of illegal use of dangerous drugs pursuant to Chemistry Report No. CDT-004-12 Tarlac. The dispositive portion of its Decision reads:

WHEREFORE, accused Francis Tabor y Aquino is found guilty beyond reasonable doubt for violation of Sections 5, 12 and 15, Article 11 of RA 9165 (illegal sale of *shabu*, illegal possession of drug paraphernalia and illegal use of prohibited drug, respectively) and hereby sentences him as follows:

1). in Criminal Case No. 12-01 for illegal sale of prohibited drugs - the penalty of life imprisonment and a fine of Php500,000.00;

2). in Criminal Case No. 12-60 for illegal possession of drug paraphernalia - the penalty of six (6) months and one (1) day to four (4) years and a Fine of Php10,000.00.

3). in Criminal Case No. 12-61 for illegal use of prohibited drug - the penalty of six (6) months drug rehabilitation in a government drug rehabilitation center.

x x x x

SO ORDERED.<sup>31</sup>



<sup>30</sup> Id. at 6-9.

<sup>31</sup> Records in Criminal Case No. 12-01, p. 91.

### ***Ruling of the Court of Appeals***

The CA affirmed the RTC Joint Decision.

Like the RTC, it ruled that the elements of illegal sale of dangerous drugs were established, *i.e.*, the identity of the seller (accused-appellant) and buyer (PO2 Navero) of the illegal drug, the consideration for its sale (₱500.00) and its delivery by the seller and payment made by the buyer.

The CA also gave credence to the testimony of PO2 Navero, *viz.*:

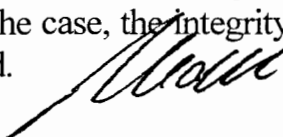
x x x PO2 Navero convincingly testified that the plastic sachet of *shabu* subject of the sale was brought to, and duly identified in the trial court. He positively identified appellant as the one who sold to him one plastic sachet of *shabu* and to whom he gave the boodle money during the entrapment operations. x x x He further identified the markings x x x found on the said object to be the initials of appellant and Librado Calma which he placed thereon at the time the appellant was caught and brought to the barangay hall. These clear and positive testimonies of PO2 Navero, corroborated by PO3 Esteban, are sufficient proof that an illegal transaction or sale of *shabu* took place.<sup>32</sup>

The CA also decreed that the lack of communication between PO2 Navero and accused-appellant during the sale transaction was of no moment because prior to the buy-bust, there was already a pre-arranged sale of *shabu* between accused-appellant and the informant. As such, the *kaliwaan* between him and PO2 Navero was facilitated by the presence of the informant, who was familiar to accused-appellant.

The CA added that the search on accused-appellant was proper, as the same was incidental to his lawful arrest which resulted in him having been found in possession of drug paraphernalia.

Moreover, the CA decreed that accused-appellant was guilty of illegal use of prohibited drugs considering that his drug test, which was conducted after his arrest, gave a positive result for methamphetamine, a dangerous drug.

Finally, the CA held that the prosecution established beyond doubt the unbroken chain of custody of the seized drug and drug paraphernalia from accused-appellant. Such being the case, the integrity and evidentiary value of the confiscated items were preserved.



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<sup>32</sup> CA rollo, pp. 133-134.

Hence, this appeal.

### Issue

Whether the CA correctly affirmed the RTC Decision convicting accused-appellant of all the charges against him.

### Our Ruling

The appeal is partly meritorious.

After a close scrutiny of the records of the case, the Court rules that the CA properly found accused-appellant guilty of illegal sale and illegal use of prohibited drugs in violation of Sections 5 and 15, Article II of RA 9165. However, accused-appellant must be acquitted of the charge of illegal possession of drug paraphernalia under Section 12, Article II of RA 9165 as his guilt thereof has not been proved beyond reasonable doubt.

*First*, as ruled by the courts *a quo*, the elements of illegal sale of prohibited drug were established here, *viz.*: the identity of the seller (accused-appellant) and the buyer (PO2 Navero); the consideration therefor (₱500.00 marked money); and, the delivery of the thing sold (subject *shabu*) and its payment made by PO2 Navero to accused-appellant.<sup>33</sup> This only proves that in a buy-bust operation like what transpired in this case, “the crime is consummated when the police officer makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer.”<sup>34</sup>

The Court similarly finds that the prosecution established the *corpus delicti* of the aforesaid sale of drug, and the same was duly presented in court. On this, we quote with approval the disquisition of the CA as follows:

x x x The testimonies of [P]O2 Navero, SPO3 Esteban and PSI Angel [(F)orensic Chemist) clearly reveal that [P]O2 Navero had temporary custody of the seized illegal drug with marking ‘FT/LT’ the moment it was seized from appellant, whilst in transit to the x x x Barangay Hall of Palimbo Caarosipan, Camiling, Tarlac, up to the Philippine National Police (PNP) Crime Laboratory for examination. Their combined testimonies likewise pointed to PSI Angel as the one who personally received the illegal drug. PSI Angel in turn categorically testified that he received the illegal drug and after examination thereof, which yielded positive result for the presence of *methamphetamine hydrochloride*, he

<sup>33</sup> *People v. Cutara*, G.R. No. 224300, June 7, 2017.

<sup>34</sup> *People v. Mon, Jr.*, G.R. No. 227874, June 7, 2017.



placed and sealed it in a brown envelope by using a masking tape containing the specimen D-003-12 ASA. PSI Angel likewise testified that he sealed the envelope, he turned it to their custodian for safekeeping and when he withdrew and retrieve[d] the envelope for presentation to the trial court, the condition of the envelope was the same and the content thereof which consisted [of] the subject plastic sachet of shabu was still inside.<sup>35</sup>

Stated in another way, right after its confiscation and in the vicinity of the *barangay* hall, PO2 Navero immediately marked the seized drug with “FT/LC” – the initials of accused-appellant and of the police’s Team Leader; and made an inventory of the confiscated items in the presence of accused-appellant, the police officers, and *Barangay* Captain de Mayo. Subsequently, the Forensic Chemist personally received the suspected *shabu* at the crime laboratory for examination; and later, he testified in court as to the receipt of the specimen, which was found positive of *shabu*, and confirmed that it was the same one presented in court. It cannot thus be denied that the required chain of custody of the seized drug was followed. Without doubt, its evidentiary value was preserved from its confiscation until its presentation in court.<sup>36</sup>

Likewise, accused-appellant failed to establish that the police officers had any ill motive to falsely accuse him of illegal sale of drug. This being so, the Court holds that the presumption that the buy-bust team had regularly performed their duties must prevail.<sup>37</sup>

Given these, the Court holds that accused-appellant is guilty beyond reasonable doubt of illegal sale of *shabu*. And, pursuant to Section 5,<sup>38</sup> Article II of RA 9165, as amended, the RTC, as affirmed by the CA, properly imposed the penalty of life imprisonment and a ₱500,000.00 fine against accused-appellant.

*Second*, accused-appellant is also guilty of illegal use of dangerous drug as the following elements thereof were proved here: (1) accused-appellant was arrested, particularly for engaging in the sale of *shabu* – an act punishable under Article II of RA 9165; (2) he was subjected to a drug test; and (3) the result of said test yielded positive of methamphetamine.<sup>39</sup> At the same time, we agree with the

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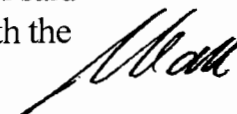
<sup>35</sup> CA rollo, p. 139.

<sup>36</sup> *People v. Ejan*, G.R. No. 212169, December 13, 2017.

<sup>37</sup> *People v. Cutara*, supra note 33.

<sup>38</sup> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, x x x any dangerous drug x x x.

<sup>39</sup> See *Dela Cruz v. People*, 739 Phil. 578, 585-587 (2014).





RTC and the CA that the penalty of six months rehabilitation be imposed against accused-appellant, pursuant to Section 15,<sup>40</sup> Article II of RA 9165.

The Court nonetheless finds that the prosecution failed to prove beyond reasonable doubt that accused-appellant was guilty of illegal possession of drug paraphernalia.

For a conviction for illegal possession of drug paraphernalia to prosper, it is primordial to show that the accused was in possession or control of any equipment, paraphernalia, and the like, which was fit or intended for smoking, consuming, administering, among other acts, dangerous drugs into the body; and, such possession was not authorized by law.<sup>41</sup>

In this case, while the prosecution contended that the buy-bust team found accused-appellant in possession of drug paraphernalia, there were discrepancies in its declaration as regards the actual paraphernalia confiscated from him.

To note, the police's joint affidavit and receipt of confiscated items executed by PO2 Navero listed the following drug paraphernalia allegedly seized from accused-appellant:

x x x several pieces of transparent plastic for repacking, scissor, 1 disposable lighter, 1 stainless lighter, 1 roll of aluminum foil, 2 sticks for repacking, 1 blue cutter x x x<sup>42</sup>

In contrast, the Information (for illegal possession of drug paraphernalia) enumerated the following drug paraphernalia allegedly seized from accused-appellant:

x x x one (1) disposable lighter, one (1) stainless lighter and one (1) roll of aluminum foil x x x.<sup>43</sup>

Moreover, PO2 Navero mentioned only two aluminum foils, plastic sachet and lighter as drug paraphernalia confiscated from accused-appellant. Thus:



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<sup>40</sup> Section 15. *Use of Dangerous Drugs*. – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act x x x.

<sup>41</sup> *People v. Arposeple*, G.R. No. 205787, November 22, 2017.

<sup>42</sup> Records in Criminal Case No. 12-60; 61, pp. 4, 12.

<sup>43</sup> *Id.* at 1.

Q: Mr. Jojie Navero, what [were] the drug paraphernalia that you confiscated from the accused?

A: Aluminum foil and plastic sachet.

Q: What else?

A: Lighter, sir.

Q: Why [did] you consider these items as drug paraphernalia at once?

A: Sir, kasi yun yung ginagamit nila sa pagdadrugs.

x x x x

Q: So you presumed that it was drug paraphernalia because you were [taught] in your seminars in drug cases that aluminum foil, scissors, lighters are drug paraphernalia.

You are now through.<sup>44</sup>

Verily, these inconsistencies cast doubt into the identity and integrity of the drug paraphernalia supposedly seized from the accused-appellant. On top of this, the prosecution failed to prove that the buy-bust team complied with the chain of custody requirement anent the subject drug paraphernalia.

Section 21, Article II of RA 9165, as amended by RA 10640,<sup>45</sup> provides for the chain of custody of the drug/s as well as drug paraphernalia, among other items, seized from an accused, to wit:

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

(1) The apprehending team having initial custody and control of the dangerous drugs, x x x instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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

<sup>44</sup> TSN, July 10, 2012, pp. 20-21.

<sup>45</sup> 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". Approved July 15, 2014.

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, finally*, That noncompliance of 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 and custody over said items.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, x x x as well as instruments/paraphernalia x x x 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 x x x shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of 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 immediately upon completion of the said examination and certification;<sup>46</sup>

In this case, PO2 Navero narrated in detail the marking of the seized illegal drug from accused-appellant. However, he did not at all testify that he marked the paraphernalia confiscated from accused-appellant; his only assertion was that he itemized the objects they found from accused-appellant's bag.<sup>47</sup> At the same time, there was no indication that PO2 Navero properly turned over the alleged paraphernalia to the crime laboratory, as the request for laboratory examination pertained only to the seized drug from accused-appellant.<sup>48</sup>

Indeed, proper marking and turnover of the confiscated drug, drug paraphernalia and the other seized items must be made in order for the accused to be liable under RA 9165, as amended. Here, considering the absence of the first link (marking) in the chain of custody of the seized drug paraphernalia, then the succeeding links as regards the custody of the same have to fail. As such, the charge of illegal possession of drug paraphernalia against accused-appellant has no basis and cannot prosper.<sup>49</sup>

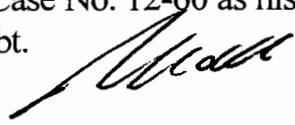
**WHEREFORE**, the appeal is **PARTLY GRANTED**. The assailed March 27, 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 06096 is **AFFIRMED** with **MODIFICATION** in that accused-appellant Francis Taboy y Aquino is **ACQUITTED** of the charge of illegal possession of drug paraphernalia subject of Criminal Case No. 12-60 as his guilt thereof had not been established beyond reasonable doubt.

<sup>46</sup> Emphases supplied.

<sup>47</sup> TSN, July 10, 2012, p. 10.

<sup>48</sup> *People v. Arposeple*, supra note 41.

<sup>49</sup> Id.



**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

*(On official leave)*  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

  
**DIOSDADO M. PERALTA**  
*Associate Justice*

  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

**ATTESTATION**

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

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*  
*Acting Chairperson*

**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*

