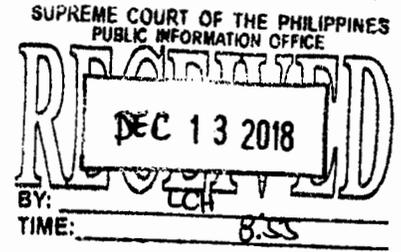




Republic of the Philippines
 Supreme Court
 Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 227015

Present:

BERSAMIN,
*Acting Chairperson,**
 DEL CASTILLO,
 LEONEN,**
 TIJAM, *and*
 GESMUNDO,*** *JJ.*

- versus -

FATIMA TUMANGONG y DIAZ,
Accused-Appellant.

Promulgated:
 NOV 25 2018

x -----

DECISION

DEL CASTILLO, J.:

This is an appeal filed by appellant Fatima Tumangong y Diaz from the February 24, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 06438, which affirmed with modification the October 30, 2013 Decision² of the Regional Trial Court (RTC) of Pasig City, Branch 70, in Criminal Case No. 17689-D, finding appellant guilty beyond reasonable doubt of violation of Section 5,³ Article II of Republic Act (RA) No. 9165.

Factual Antecedents

Appellant was charged with violation of Section 5, Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in an Information⁴ which reads:

* Per Special Order No. 2606 dated October 10, 2018.

** Designated Additional Member per November 29, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

*** Per Special Order No. 2607 dated October 10, 2018.

¹ CA *rollo*, pp. 98-109; penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla.

² Records, pp. 101-104; penned by Presiding Judge Louis P. Acosta.

³ Illegal Sale of Dangerous Drugs.

⁴ Records, pp. 1-2.

That on or about the 13th day of September 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and feloniously sell, deliver, and give away to a poseur[-]buyer zero point thirty (0.30) gram of Methylamphetamine Hydrochloride, a dangerous drug also known as “shabu”, in violation of the above-cited law.

CONTRARY TO LAW.⁵

When arraigned, appellant pleaded not guilty to the crime charged.⁶

Version of the Prosecution

During the trial, the prosecution presented PO3 Jowel Briones (PO3 Briones) and PO1 Jerry Balbin (PO1 Balbin). Based on their testimonies and the documentary exhibits offered, the following facts emerged:

On September 13, 2011, at around 12:00 noon, a confidential informant reported to the office of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of the Taguig City Police Station that appellant was engaged in illegal drug activities along General Santos Avenue, Upper Bicutan, Taguig City. Acting on said information, the Chief of SAID-SOTG, PCINSP Mihilan Abu Payao (PCI Payao), formed a buy-bust team against appellant and designated PO3 Briones as poseur-buyer and PO1 Balbin as back-up.⁷ To that end, PO3 Briones was given two pieces of five hundred (PhP500.00) peso bills bearing serial nos. RG295459 and 2265979 as marked money.⁸ The bills were photocopied and recorded in the police blotter.⁹

At around 4:00 o'clock of the same day, PCI Payao, PO3 Briones, PO1 Balbin, and the confidential informant proceeded to Upper Bicutan and conducted the operation.¹⁰ About 10 meters away from the target place, the informant pointed to a woman wearing *maong* pants and black shirt. She was standing in front of Landbank, General Santos Avenue Branch, and appeared to be waiting for possible customers. That woman was the appellant, the target of the operation.¹¹ The confidential informant introduced PO3 Briones to appellant and convinced her that PO3 Briones was interested to buy one thousand pesos (PhP1,000.00) worth of *shabu*. Appellant told them to wait

⁵ Id. at 1.

⁶ Id. at 28.

⁷ Records, p. 6.

⁸ TSN, March 28, 2013, pp. 9-10.

⁹ Id.

¹⁰ Records, p. 6.

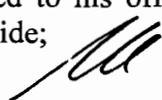
¹¹ Id.

and left. After 30 minutes, appellant returned with a plastic sachet of *shabu*¹² and asked that she be paid first.¹³ PO3 Briones thus gave the marked money to appellant who, in turn, handed over the plastic sachet of *shabu* to PO3 Briones. Thereafter, PO3 Briones scratched his head as the pre-arranged signal that the transaction had been consummated.¹⁴ PO1 Balbin then rushed to the scene and assisted in arresting appellant.¹⁵

PO3 Briones and PO1 Balbin introduced themselves as police officers and informed appellant of the reason why she was being arrested, as well as of her constitutional rights.¹⁶ They tried to secure the presence of *barangay* officials but no *barangay* officials came even though they waited for an hour.¹⁷ They also tried to contact the Department of Justice (DOJ) but since it was already 5:00 o'clock in the afternoon, no representative from the DOJ came to the area of operation.¹⁸ PO3 Briones then inventoried the item seized and marked the plastic sachet of *shabu* with "JVB-09-13-11" at the place of arrest and in the presence of appellant, PCI Payao and PO1 Balbin.¹⁹

The police officers then brought appellant to their headquarters, with PO3 Briones keeping custody of the item seized.²⁰ At the police station, PO3 Briones turned over the plastic sachet of *shabu* to PO2 Alexander Saez (PO2 Saez) who was the duty investigator for documentation and investigation.²¹ PO3 Briones then accompanied PO2 Saez in bringing the seized item to the crime laboratory for examination.²²

The State dispensed with the testimony of Police Chief Inspector Richard Allan B. Mangalip (PCI Mangalip) because the parties agreed to stipulate on the following matters —

1. That Police Chief Inspector Richard Allan Mangalip is a member of the Philippine National Police and a qualified forensic chemist who conducted examination on the specimen submitted to his office to determine the presence of methamphetamine hydrochloride;
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¹² TSN, March 28, 2013, p. 13.

¹³ Id. at 13-14.

¹⁴ Id. at 14.

¹⁵ Id. at 14-15.

¹⁶ Id. at 15.

¹⁷ Id. at 16.

¹⁸ Id. at 32.

¹⁹ Id. at 16.

²⁰ Id. at 17-18.

²¹ Id. at 18.

²² Id. at 24.

2. That after examination of the specimen submitted, he prepared the Physical Science Report No. D-488-11S with the Findings that said specimen gave positive result to the test for methamphetamine hydrochloride and can identify said report and his signature;

3. Jurisdiction of the Court and identity of the accused as charged on the Information.²³

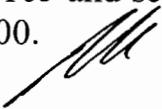
Version of the Defense

The defense presented appellant as its lone witness. Appellant denied the charge.

According to her, on September 13, 2011, at around 10:00 o'clock in the morning, she was inside her house washing dishes when six armed men in civilian clothes barged inside the house,²⁴ introduced themselves as police officers,²⁵ and asked about the whereabouts of a certain Arjay.²⁶ When she said that she did not know that person, one of the men (PO3 Briones) slapped her on the face and forced her to point to the location of Arjay.²⁷ The men then ransacked her house for about 20 minutes.²⁸ When they failed to find whatever it was they were looking for, the men warned appellant to cooperate; otherwise, she would be brought to the police station. To this she replied: "why will you bring me with you, I am not the person you are looking for?"²⁹ On hearing this reply, one PO1 Balbin handcuffed her and he and his fellow police officers brought her to the police station.³⁰ During her interrogation, appellant denied ownership of the plastic sachet with two pieces of five hundred peso (PhP500.00) bills placed on top of a table inside the police precinct.³¹

Ruling of the Regional Trial Court

On October 30, 2013, the RTC of Pasig City, Branch 70, rendered its Decision finding appellant guilty beyond reasonable doubt of having violated Section 5, Article II of RA 9165 and sentenced her to life imprisonment and to pay a fine of PhP300,000.00.



²³ Records, pp. 57-58.

²⁴ TSN, August 28, 2013, pp. 7-12.

²⁵ Id. at 12.

²⁶ Id. at 13.

²⁷ Id. at 13-14.

²⁸ Id. at 14.

²⁹ Id. at 16.

³⁰ Id. at 17-18.

³¹ Id. at 19-20.

The RTC gave full credence to the testimonies of PO3 Briones and PO1 Balbin as they are presumed to have performed their duties regularly. The RTC rejected appellant's defense of denial for being inherently weak as compared to the positive testimonies of the prosecution witnesses.

Ruling of the Court of Appeals

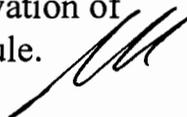
On appeal, appellant contended that the prosecution failed to prove the integrity of the seized *shabu* because the apprehending officer did not comply with the procedure on the seizure and custody of drugs. In fine, she maintained that the prosecution failed to establish her guilt beyond reasonable doubt.

On February 24, 2016, the CA denied the appeal. It held that the elements of illegal sale of drugs had been duly established, to wit: (a) that appellant was the person who sold the *shabu* during the buy-bust operation; and (b) that appellant delivered the plastic sachet of *shabu* to the poseur-buyer, PO3 Briones, after the latter paid appellant the sum of Php1,000.00 as consideration for the sale of the prohibited drug. The CA likewise upheld the presumption of regularity in the performance of their duty when the police officers conducted the buy-bust operation. It then ruled that the positive assertions of these police officers prevailed over appellant's weak denial.

The CA also ruled that there was no break or irregularity in the chain of custody of the seized *shabu*. It declared that the prosecution was able to establish the seizure, the marking, and the inventory of the prohibited drug; that PO3 Briones transferred the custody of the seized item to the assigned investigator, PO2 Saez, who prepared the request for a laboratory examination of the seized item; that PO2 Saez delivered the seized item to the PNP Crime Laboratory, where it was received by PO2 Elmar Manuel (PO2 Manuel) and PCI Mangalip; and that PCI Mangalip conducted a laboratory examination on the seized item that yielded positive result for *shabu*, a prohibited drug. The CA held that although there was no strict compliance with the chain of custody requirements, the identity, integrity, and probative value of the seized *shabu* had been preserved by the police officers.

Unwilling to accept the CA's verdict, appellant instituted this present appeal. She argues in her Appellant's Brief³² that her guilt had not been proven beyond reasonable doubt because the prosecution failed to comply with the strict requirements of Section 21 of RA 9165 for the preservation of the seized item's evidentiary integrity under the Chain of Custody Rule.

³² CA rollo, pp. 43-53.



Our Ruling

The appeal is meritorious.

For the conviction of illegal sale of drugs, the prosecution must prove: (1) the identity of the buyer and the seller of the subject drug; (2) the object and the consideration of the sale; and, (3) the delivery of the item sold and its payment. Further, it is crucial that the integrity of the seized drug be preserved; in this regard, the prosecution must prove an unbroken chain of custody over the subject illegal drug. This means that every link in the chain of custody, from the time of its confiscation until its presentation in court, must be clearly established.³³

After a careful examination of the records of the case, we find that the prosecution failed to establish an unbroken chain of custody of the seized drugs.

To ensure that the integrity and the evidentiary value of the seized items are preserved, the proper chain of custody of the seized items must be shown. Generally, there are four links in the said chain of custody: 1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and 4) the turnover and submission thereof from the forensic chemist to the court.³⁴ The prosecution has the burden to show “every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence.”³⁵ Failure to strictly comply with the rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that “(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.”³⁶

In the case at bench, the records clearly showed that PO3 Briones marked the seized plastic sachet of *shabu* and prepared an Inventory³⁷ at the place of arrest and in the presence of the accused;³⁸ that PO3 Briones turned over the seized item to the assigned investigator, PO2 Saez, who prepared the

³³ *People v. Bugtong*, G.R. No. 220451, February 26, 2018.

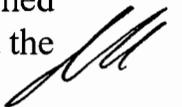
³⁴ *People v. Gajo*, G.R. No. 217026, January 22, 2018.

³⁵ *People v. Bartolini*, 791 Phil. 626, 634 (2016).

³⁶ *People v. Geronimo*, G.R. No. 225500, September 11, 2017.

³⁷ Exhibit “G” of the Prosecution, records, p. 80.

³⁸ TSN, March 28, 2013, pp. 15-16.



Request for Laboratory Examination;³⁹ that the plastic sachet was delivered by PO2 Saez to the PNP Crime Laboratory – Southern Police District, where it was received by PO2 Manuel;⁴⁰ and that PCI Mangalip conducted a laboratory examination and submitted a Physical Science Report,⁴¹ indicating that the specimen was positive for *methamphetamine hydrochloride*, a dangerous drug.

The prosecution erected its case upon the testimonies of PO3 Briones who stated that he turned over the sachet of *shabu* to the assigned investigator, PO2 Saez, who in turn claimed that he delivered the seized item to the crime laboratory and was received by PO2 Manuel. Quite significantly, however, neither PO2 Saez nor PO2 Manuel was ever presented in court to testify to the circumstances surrounding the alleged receipt of the seized drug. Equally significant, the testimony of the forensic chemist, PCI Mangalip, was dispensed with by the prosecution. True, it was stipulated that the testimony of PCI Mangalip would be dispensed with, but it is no less true that this stipulation merely covered the result of the examination conducted on the specimen submitted to the forensic chemist. Indeed, every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement.⁴² In *People v. Hementiza*,⁴³ this Court stressed that every person who touched the item must describe his or her receipt thereof, what transpired while the same was in his or her possession, and its condition when delivered to the next link. Evidently, here, there was failure to show every link of the chain of custody.

Independently of the gap in the chain of custody of the seized specimen which is already fatal to the prosecution's case, the Court likewise observes that neither photograph nor inventory of the seized item had been made in the presence of an elected public official, a representative of the DOJ and of the media. Section 21 of Article II of RA 9165, prior to its amendment by RA 10640⁴⁴ on July 15, 2014, which is the law applicable at the time of the commission of the offense, clearly requires the apprehending team to mark, conduct a physical inventory, and to photograph the seized item in the presence of the accused or his representative or counsel, with an elected public official and a representative of DOJ and the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter the common practice

³⁹ TSN, March 28, 2013, p. 18; Exhibit "E" and "F" of the Prosecution, records, pp. 78-79.

⁴⁰ Exhibit "E" of the Prosecution, records, p. 78.

⁴¹ Exhibit "B" of the Prosecution, id. at 74.

⁴² *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122, 139.

⁴³ G.R. No. 227398, March 22, 2017.

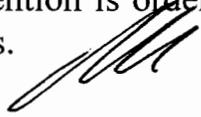
⁴⁴ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved July 15, 2014.

of planting evidence.⁴⁵ While strict compliance may not always be possible, the police officers, nonetheless, should give justifiable reasons for non-compliance. Regrettably, in the instant case, no justifiable reason had been proffered for this fatal omission. The explanation of PO3 Briones that no photographs were taken because he had no camera at the time is a lame one and will not hold. More than that, there was no showing that there was any effort to procure the presence of a representative of media, when no *barangay* official came to the place of arrest and after they were declined by the DOJ. Law enforcers should be mindful of the procedures required in the seizure, handling and safekeeping of confiscated drugs; otherwise, there will be wastage of efforts and resources in the apprehension and prosecution of violators of our drug laws.⁴⁶

Accordingly, the breaches of procedure committed by the police officers in this case, militate against a finding of guilt beyond reasonable doubt against appellant as the integrity and evidentiary value of the *corpus delicti* had been compromised.⁴⁷ In *People v. De Guzman y Danzil*,⁴⁸ the Court held that the failure to observe the proper procedure negates the operation of the presumption of regularity accorded to police officers. As a general rule, the testimonies of the police officers who apprehended the accused are accorded full faith and credit because of the presumption that they performed their duties regularly. But when the performance of their duties is tainted with failure to comply with the procedure and guidelines prescribed, the presumption is effectively destroyed.

Finally, we reiterate what we said in *People v. Caiz*⁴⁹ that courts are reminded to exercise a higher level of scrutiny when deciding cases involving miniscule amounts of dangerous drugs. There should be stricter compliance with the rule on the chain of custody when the amount of the dangerous drug is minute due to the possibility that the seized item could be tampered.

WHEREFORE, the appeal is **GRANTED**. The February 24, 2016 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 06438 is **REVERSED AND SET ASIDE**. Appellant Fatima Tumangong y Diaz is **ACQUITTED** of the charge as her guilt had not been established beyond reasonable doubt. Her immediate release from detention is ordered, unless other lawful and valid ground for her detention exists.



⁴⁵ *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

⁴⁶ *People v. Sabdula*, 733 Phil. 85, 101 (2014).

⁴⁷ *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204.

⁴⁸ 630 Phil. 637, 655 (2010).

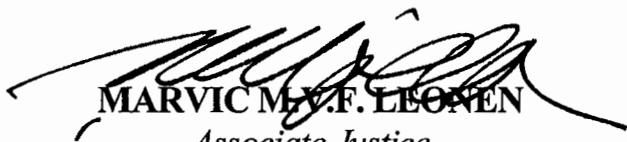
⁴⁹ 70 Phil. 183, 209-210 (2016).

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson


MARVIC M. V. F. LEONEN
Associate Justice

(On official leave)
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.


LUCAS P. BERSAMIN
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

Senior Associate Justice

(Per Section 12, Republic Act No. 296
The Judiciary Act of 1948, as amended)

