



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JASPER TAN y SIA,

Petitioner,

G.R. No. 232611

Present:

- versus -

PERLAS-BERNABE, S.A.J.,

Chairperson,

LAZARO-JAVIER,

M. LOPEZ,

ROSARIO, and

J. LOPEZ, JJ.

PEOPLE OF THE

PHILIPPINES,

Respondent.

Promulgated:

APR 26 2021

X-----X

RESOLUTION

M. LOPEZ, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeking to annul and set aside the Decision² dated February 14, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 01396.

ANTECEDENTS

Two (2) Informations³ dated June 24, 2002 were filed against Jasper Tan y Sia (Jasper) before the Regional Trial Court (RTC) of Dipolog City, Branch 6, charging him with Illegal Sale and Illegal Possession of Dangerous Drugs under Sections 15 and 16, Article III of Republic Act (RA) No. 6425:

¹ *Rollo*, pp. 11-27.

² *Id.* at 108-122; penned by Associate Justice Edgardo T. Lloren, with the concurrence of Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas.

³ *Id.* at 29-30.

CRIM CASE NO. 11265

That on June 22, 2002 at 2:15 in the afternoon, more or less, at Magsaysay corner Tomas Claudio Streets, Miputak, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that unauthorized sale and distribution of regulated drug is punishable by law, did then and there willfully, unlawfully, and feloniously sell, distribute, and deliver one (1) small transparent plastic sachet of Methyl [amphetamine] Hydrochloride, more particularly known as "Shabu," approximately weighing 0.10 gram, to a poseur buyer with the use of two (2) pieces marked One Hundred Peso bills bearing Serial Nos. CX093824 and TL275508, without legal authority to sell the same, said act having been committed in gross violation of Section 15, Article III of R.A. 6425, as amended.

CONTRARY TO LAW.

CRIM CASE NO. 11266

That on June 23, 2002, at 2:15 in the afternoon, more or less, at Magsaysay corner Tomas Claudio Streets, Miputak, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that unauthorized use, possession and control of regulated drug is punishable by law, did then and there willfully, unlawfully, and feloniously have in his possession and control six (6) big and two (2) small transparent plastic sachets of methyl amphetamine hydrochloride, more particularly known as "shabu[,"] a form of regulated drug, approximately weighing a total of 2.74 gram, one (1) piece Five Hundre[d] Peso bill, Fifteen (15) pieces One Hundred Peso bills and two (2) pieces Fifty Peso bill which were proceeds of the offense, without legal authority to possess the same in gross Violation of Section 16, Article III of R.A. 6425, as amended.

CONTRARY TO LAW.⁴

On arraignment, Jasper pleaded not guilty to the crimes charged. Thereafter, trial on the merits ensued.⁵

During trial, the prosecution presented two (2) witnesses,⁶ namely, PSI Susan Memoracion Cayabyab (PSI Susan), Forensic Chemical Officer,⁷ and PO2 Jose Rizaldy Calibugar (PO2 Jose), the police officer who conducted surveillance and buy-bust operation.⁸ The witnesses are members of the Philippine National Police (PNP) Dipolog City Station Anti-Vice Team.⁹

The prosecution witnesses testified that they have been conducting surveillance operations against Jasper beginning the last week of May 2002.¹⁰ On June 21, 2002, the police officers applied for a search warrant with Judge

⁴ *Id.* at 29-30.

⁵ *Id.* at 30.

⁶ *Id.*

⁷ *Id.* at 34.

⁸ *Id.* at 30.

⁹ *Id.* at 32.

¹⁰ TSN, January 29, 2004, p. 6; *Rollo*, p. 151.

Eustolia Mata of Municipal Trial Court in Cities (MTCC) Branch 2.¹¹ The next day, the police officers gave two (2) marked 100-peso bills to the *poseur-buyer* who transacted with Jasper at the gate of the latter's house. The police officers were observing the transaction covertly. The buy-bust operation was successful so they handcuffed Jasper, and served him a search warrant dated June 21, 2002. Thereafter, they searched Jasper's room in the presence of Barangay Captain Emerenciana Velasco. Recovered were the marked money, amounting to ₱2,100.00, drug paraphernalia, and white crystalline substance inside six (6) big plastic sachets and two (2) small plastic sachets found on a table and on top of a cabinet inside Jasper's room. The sachets with white crystalline substance were delivered to the crime laboratory for examination and all tested positive for *shabu* (methamphetamine hydrochloride).¹² For his part, Jasper offered the defense of denial and frame-up.¹³

On November 10, 2015, the RTC rendered a Joint Decision¹⁴ convicting Jasper of the charges against him. The trial court ruled that denial is a weak defense, and the prosecution was able to prove Jasper's guilt beyond reasonable doubt in both cases. The RTC disposed, thus:

WHEREFORE, judgment is rendered declaring accused JASPER TAN guilty beyond reasonable doubt of the crimes charged in these two (2) Informations. He is hereby sentenced to suffer the following:

1.) For Criminal Case No. 11265 for Violation of Sec. 15, Art. III of R.A. 6425, applying the Indeterminate Sentence Law, imprisonment from FOUR (4) years, TWO (2) months and ONE (1) day to SIX (6) years of prision correccional in its maximum period and to pay a FINE in the amount of TWELVE THOUSAND (₱12,000.00) PESOS with subsidiary imprisonment in case of insolvency.

2.) For Criminal Case No. 11266, applying the Indeterminate Sentence Law, imprisonment from ONE (1) year, EIGHT (8) months and TWENTY ONE (21) days to TWO (2) years, ELEVEN (11) months and TEN (10) days of prision correccional and to pay a FINE in the amount of FOUR THOUSAND (₱4,000.00) PESOS with subsidiary imprisonment in case of insolvency.

The subject shabu and other items confiscated from the accused are hereby ordered confiscated in favor of the government and shall be disposed of appropriately in accordance with existing rules.

SO ORDERED.¹⁵

Aggrieved, Jasper filed an appeal before the CA. He questioned the validity of the buy-bust operation, the prosecution's failure to account for each link in the chain of custody, the validity of the search warrant, and the sufficiency of PO2 Jose's testimony to establish his guilt.

¹¹ TSN, October 16, 2003, p. 5; *Rollo*, p. 137.

¹² *Id.* at 32-33.

¹³ *Id.* at 32.

¹⁴ *Id.* at 29-36; penned by Presiding Judge Jose Rene G. Dondoyano.

¹⁵ *Id.* at 35-36.

However, the CA affirmed Jasper's conviction in a Decision dated February 14, 2017:

WHEREFORE, the assailed Joint Judgment dated November 10, 2015 of the Regional Trial Court of Dipolog City, 9th Judicial Region, Branch 6, convicting the appellant Jasper Tan y Sia for violation of Sections 15 and 16, Article III of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act is AFFIRMED with MODIFICATION, Accused-appellant Jasper Tan y Sia is hereby sentenced to suffer the following:

1.) For Criminal Case No. 11265 for Violation of Section 15, Article III of Republic Act No. 6425, accused-appellant Jasper Tan y Sia is sentenced to an indeterminate penalty imprisonment of six (6) months of *arresto mayor*, as minimum, to four (4) years, two (2) months and one (1) day of *prision correccional*, as maximum;

2.) For Criminal Case No. 11266, for Violation of Section 16, Article III of Republic Act No. 6425, accused-appellant Jasper Tan y Sia is sentenced to an indeterminate penalty of imprisonment of six (6) months of *arresto mayor*, as minimum, to four (4) years, two (2) months and one (1) day of *prision correccional*, as maximum.

SO ORDERED.¹⁶

Hence, this recourse. Jasper assails the validity of the search warrant because it does not have a specific description of the house and its premises.¹⁷ Furthermore, he asserts that the search was invalid because he was already arrested and his movement restricted when the search was conducted, so his right to witness the search was violated.¹⁸ Jasper likewise argues that the prosecution did not comply with the rule on chain of custody. In sum, he posits the seized drugs are not admissible as evidence, and the buy-bust operation as well as his arrest were illegal.¹⁹

On the contrary, the People of the Philippines (People), through the Office of the Solicitor General, contends that the prosecution has clearly established Jasper's guilt beyond reasonable doubt in both charges of Illegal Sale and Illegal Possession of Prohibited Drugs.²⁰ The People states that the prosecution has established the conduct of the buy-bust operation, and consequently, the legality of Jasper's arrest.²¹ They further aver that the non-presentation of the informant, who acted as *poseur-buyer*, is not essential²² because what matters are the unbroken chain of custody of the illegal drugs and that the integrity and evidentiary value thereof have not been compromised.²³ The People also maintain that there was a lawful search by

¹⁶ *Id.* at 13-14.

¹⁷ *Id.* at 23.

¹⁸ *Id.* at 23-24.

¹⁹ *Id.* at 16.

²⁰ *Id.* at 203.

²¹ *Id.* at 220.

²² *Id.* at 222.

²³ *Id.* at 223.

virtue of a valid search warrant²⁴ and Jasper's defense of denial cannot exculpate him from criminal liability.²⁵ Finally, the cited error in the Information in Criminal Case No. 11266 is inconsequential.²⁶

RULING

The petition is meritorious.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. To overturn this presumption, the prosecution must proffer proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty as to convince and satisfy the conscience of those who act in judgment.²⁷ The constitutional presumption of innocence requires the courts to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused.²⁸ If there is doubt, that doubt should be resolved in favor of the accused in order to give flesh and bones to this constitutionally-protected right. Applying this precept in the case at bar, this Court is convinced that the prosecution failed to prove Jasper's guilt beyond reasonable doubt, hence, he must be acquitted.

The prosecution failed to establish the buy-bust operation through the "objective test."

To determine the validity of a buy-bust operation, the Court has consistently applied the "objective test." In *People v. Doria*,²⁹ the Court explained that the "objective test" requires the details of the purported transaction during the buy-bust operation to be clearly and adequately shown, *i.e.*, the initial contact between the *poseur-buyer* and the pusher, the offer to purchase the drug, and the promise or payment of the consideration, payment using the buy-bust or marked money, up to the consummation of the sale by the delivery of the illegal drug subject of the sale whether to the informant alone or the police officer.³⁰ All these details must be subject of strict scrutiny by courts to ensure that citizens are not unlawfully induced to commit an offense.³¹

Here, the prosecution failed to clearly establish the details of the purported sale. Nothing in the records shows the initial contact between the *poseur-buyer* and the seller, and the manner by which the initial contact was made. The offer to buy, the willingness to sell, and the agreed purchase price were not satisfactorily shown. PO2 Jose's testimony as to the details that led

²⁴ *Id.* at 225.

²⁵ *Id.* at 228.

²⁶ *Id.* at 229.

²⁷ *Franco v. People*, 780 Phil. 36, 43 (2016).

²⁸ *People v. Abdula*, G.R. No. 212192, November 21, 2018, citing *People v. Ratunil*, 390 Phil. 218, 235 (2000).

²⁹ 361 Phil. 595 (1999).

³⁰ *Id.* at 621.

³¹ *People v. Pagkalinawan*, 628 Phil. 101, 113 (2010).



to the consummation of the sale is lacking in detail to satisfy the rigid requirements of the "objective test." What is more, considering that PO2 Jose admitted that it was the confidential informant who transacted with Jasper, he was not privy to the entire transaction. There was no indication that PO2 Jose directly saw an illegal drug being sold to the *poseur-buyer*. According to PO2 Jose, he went to Jasper's house with PO2 Cesar Maghinay, SPO4 Orlando Villabito, SPO3 Abunda, and SPO1 Abrasaldo.³² He gave two (2) 100-peso bills, marked with his initials,³³ to the informant who acted as *poseur-buyer*. The police officers were hiding when the transaction occurred at the gate of Jasper's house.³⁴ They were positioned 10 to 15 meters away from Jasper and the informant,³⁵ but PO2 Jose said he saw Jasper gave the informant *shabu* in exchange for ₱200, to wit:

Q Now, so what happened after that because you decided to conduct first an entrapment or buy-bust operation to determine if there were still stocks of shabu in the possession of Jasper Tan?

A We requested one of our informants, sir, to act as poseur buyer.

Q And what was to be used during the entrapment?

A Marked money, sir.

x x x x

Q Now, to whom did you give this marked money?

A To our poseur buyer.

x x x x

Q How many meters were you from them that you could see the transaction going on?

A 10 to 15 meters.

Q You were hiding or you were exposed?

A Hiding, sir.

Q Now, at that distance what did you see between Jasper Tan and the poseur buyer?

A A transaction, sir.

Q Goods were being exchanged?

A Yes, sir.

³² SPO3 Abunda's and SPO1 Abrasaldo's complete names were not stated; *rollo*, pp. 31, 33, and 53.

³³ TSN, October 16, 2003, p. 6; *rollo*, p. 138.

³⁴ *Rollo*, pp. 31 and 33.

³⁵ TSN, October 16, 2003, p. 7; *rollo*, p. 139.

x x x x

Q And then what did Jasper Tan do in exchange of the ₱200.00?

A He gave shabu to our poseur buyer, sir.³⁶ (Emphases supplied.)

No witness who had personal knowledge of the alleged transaction which took place between the *poseur-buyer* and Jasper was presented. The police officers could not hear or see what was happening between the *poseur-buyer* and Jasper, considering the distance of their position from the location of the transaction along with the size of the subject of this transaction. We find it doubtful that PO2 Jose was able to reasonably ascertain what was said, if any, between Jasper and the *poseur-buyer*, and what was handed by Jasper, if any, to the *poseur-buyer*. In several cases, this Court took into account the distance of the officers from the location where the transaction occurred in acquitting the accused. In *People v. Delina*,³⁷ the police officers were about 8 to 10 meters away. Likewise, in *People v. Conlu*,³⁸ the police officers were approximately 10 meters away. The Court found that police officer was “merely an observer” when he testified that he was more or less 7 meters away³⁹ in *People v. Casacop*.⁴⁰ In these cases, we found that the police officers had no personal knowledge of the transaction, their testimonies were insufficient, and the non-presentation of the *poseur-buyer* proved fatal.

The *poseur-buyer* would have established what transaction took place, but he was not presented. While it is true that a conviction may be confirmed notwithstanding the non-presentation of the *poseur-buyer* in the buy-bust operation, such non-presentation is excusable only when the *poseur-buyer*'s testimony is merely corroborative, there being some other eyewitness who is competent to testify on the sale transaction.⁴¹ Such cannot be said in this case. Even if coming from a police officer who enjoys the presumption of regularity, PO2 Jose's testimony is insufficient to induce moral certainty. The presumption of regularity of performance of duty cannot prevail over the constitutional presumption of innocence of the accused.⁴² While we recognize that there is a need to hide the informant's identity and preserve his invaluable service to the police, since the *poseur-buyer* and the confidential informant were one and the same, without the *poseur-buyer*'s testimony, the State did not credibly incriminate Jasper.⁴³

Again, the “objective test” requires that the prosecution paint a clear picture of how the initial contact between the buyer and the pusher was made. It is not enough to show that there was an exchange of money and illegal drugs. The details that led to such exchange must be clearly and adequately

³⁶ TSN, October 16, 2003, p. 6-7; *rollo*, pp. 138-139.

³⁷ G.R. No. 243578, June 30, 2020.

³⁸ G.R. No. 225213, October 3, 2018.

³⁹ *People v. Casacop*, 755 Phil. 265, 279 (2015).

⁴⁰ 755 Phil. 265 (2015).

⁴¹ *People v. Delina*, *supra*.

⁴² *People v. Tadepa*, 314 Phil. 231, 240 (1995).

⁴³ See *People v. Amin*, 803 Phil. 557, 565 (2017).

accounted for. Failing in which will certainly cast a doubt on the veracity of the whole buy-bust operation. On this note alone, the guilt of Jasper as to illegal sale of dangerous drugs is already doubtful. Nonetheless, the lapses that the buy-bust team committed in this case are worth mentioning.

The prosecution failed to establish an unbroken chain of custody.

In cases involving dangerous drugs, the confiscated drugs constitute the very *corpus delicti* of the offense and the fact of their existence is necessary to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.⁴⁴ In other words, a conviction cannot be sustained if there is a persistent doubt as to the identity of the seized drugs. Apart from showing that the elements of sale and possession are present, the fact that the substance illegally sold and possessed is the same substance offered in court as exhibit must be established with the same degree of certitude as that needed to sustain a guilty verdict.⁴⁵ Should the State not definitively establish that the dangerous drugs presented in court were the very same substance actually recovered from the accused, the criminal prosecution for sale or possession of drugs should fail because the guilt of the accused was not established beyond reasonable doubt.⁴⁶

The identity of the seized drugs is established by showing the duly recorded authorized movements and custody of seized drugs from the time of seizure or confiscation to receipt by the investigating officer then turn-over to the forensic laboratory up to presentation in court. The preservation of the chain of custody applies regardless of whether the prosecution is brought for a violation of RA No. 6425 or RA No. 9165, which always starts with the marking of the articles immediately upon seizure. The marking serves to separate the marked articles from the corpus of all other similar or related articles from the time of the seizure until disposal thereby obviating the hazards of switching, "planting," or contamination of the evidence.⁴⁷

In Criminal Case No. 11265, it is unclear how the item subject of the buy-bust operation was turned over to the police officers. PO2 Jose did not testify that he received the item subject of the sale at the place of the buy-bust operation as the next time the *poseur-buyer* was mentioned in PO2 Jose's narration was when the police officers brought Jasper to the police station and the *poseur-buyer* was there as well.⁴⁸ What happened to the item in the possession of the *poseur-buyer* was left unexplained since PO2 Jose's testimony did not describe this gap in the chain of custody.

⁴⁴ *People v. Caranto*, G.R. No. 217668, February 20, 2019.

⁴⁵ *People v. Barba*, 611 Phil. 330, 337 (2009).

⁴⁶ *People v. Angngao*, 755 Phil. 597, 605 (2015).

⁴⁷ *People v. San Jose*, 836 Phil. 355, 373 (2018).

⁴⁸ TSN, October 16, 2003, p. 11; *rollo*, p. 143.

As to Criminal Case No. 11266, PO2 Jose testified that they “turned over the confiscated *shabu* to the person who issued the warrant,” meaning, their office made a compliance and returned the search warrant to the Court that issued the search warrant, to wit:

Q So with the several sachets that were recovered from the possession of the accused containing white crystalline granules believed to be *shabu* or [methamphetamine] hydrochloride, a regulated drug, what did you do with these sachets?

A **We turned over the shabu confiscated to the person who issued the search warrant.**

Q You mean to say that your office made a compliance and returned the search warrant to the Court that issued the search warrant?

A Yes, sir.⁴⁹ (Emphasis supplied.)

Thereafter, PO2 Jose caused the weighing of the *shabu* confiscated in Agencia Dipolog,⁵⁰ where a certain Elma Bacho weighed the *shabu*⁵¹ and a certification was issued.⁵² The items were weighed including the wrapper.⁵³ However, upon cross-examination, PO2 Jose could not clarify who made the handwritten entries on the certification as to the weight of the *shabu*. He said the entries were made by someone who worked at Elma Bacho’s Pawnshop, but he also stated that the entry was made at the police station,⁵⁴ viz:

Q The last time you testified that the *shabu* was weighed by Agencia Dipolog, is that right?

A Yes, sir.

Q Were you present when the *shabu* were weighed by a certain Elma Bacho?

A Yes, sir.

X X X X

Q I show you this Exhibit O which is a certification, you will agree with me that this certification is all printed or computerized?

A Yes, sir.

Q **But the entries opposite the weight are written by ballpen, who entered this?**

A **The one who signed the certification and the one who weighed the *shabu*.**

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ TSN, January 29, 2004, p. 14; *rollo*, p. 160.

⁵² TSN, October 16, 2003, p. 11; *rollo*, p. 143.

⁵³ TSN, October 16, 2003, p. 12; *rollo*, p. 144.

⁵⁴ TSN, January 29, 2004, p. 15; *rollo*, p. 161.

Q Meaning to say it was Elma Bacho who entered this?

A By someone who is working Elma Bacho's pawnshop.

Q And who made this entry here this certification?

A At the Police Station, sir.⁵⁵ (Emphases supplied.)

After the items were weighed, it was likewise unclear how these were delivered to the forensic chemist. PO2 Jose testified that he sent the items to the Crime Lab in Zamboanga City, to wit:

Q And then where did you send the shabu?

A Crime lab.

Q In Zamboanga City?

A In the motorpool, sir.

Q That office in Minaog and transmitted this to the PNP crime laboratory in Zamboanga City?

A Yes, sir.⁵⁶

However, the prosecution also alleged that the Chief of Police of Dipolog City sent a transmittal letter addressed to the Regional Crime Laboratory of the PNP with a request to conduct qualitative laboratory examination on the drug specimens attached thereto. The letter-request, however, was first coursed through the Officer-in-Charge of the Provincial Crime Laboratory who subsequently endorsed the letter request to the PNP Regional Crime Laboratory in Zamboanga City.⁵⁷

Prosecution failed to establish the circumstances of the markings of the drugs seized.

PO2 Jose also did not testify as to the marking of the items seized. Nowhere did PO2 Jose narrate who did the marking, and when and where the items seized were marked:

Q So after these illegal items were seized from the accused Jasper Tan by virtue of the search warrant, what did you do after that?

A We brought him to the police station, sir.

Q Now, was there a receipt of property seized issued?

A Yes, sir.

⁵⁵ TSN, January 29, 2004, pp. 14-15; *rollo*, p. 160-161.

⁵⁶ TSN, October 16, 2003, p. 12; *rollo*, p. 144.

⁵⁷ *Rollo*, p. 195.

Q Now, I am showing to you Receipt of Property Seized signed by the seizing officer, SPO4 Orlando Villabito, and signed by Hon. Barangay Captain Emerenciana Velasco, are you referring to this one?

A Yes, sir.

X X X X

Q Now, and you said that he was able to buy shabu during the entrapment from Jasper Tan, where was that shabu.

A He turned it over to us.

Q And that was included also in the receipt of properties seized?

A Yes, sir.

Q So with the several sachets that were recovered from the possession of the accused containing white crystalline granules believed to be shabu or [methamphetamine] hydrochloride, a regulated drug, what did you do with these sachets?

A We turned over the shabu confiscated to the person who issued the search warrant.⁵⁸

Prosecution failed to prove that same substance recovered from the accused was the same substance presented in court.

In PO2 Jose's testimony, he did not identify the *shabu* as evidence in both Criminal Case Nos. 11265 and 11266.⁵⁹ PO2 Jose testified as follows:

Q And what did you recover during the search made in the presence of Barangay Captain Emerenciana Velasco?

A We recovered drug paraphernalia and also shabu, sir.

X X X X

Q How many sachets were recovered by your [*sic*] from his room?

A Six big plastic sachets containing white crystalline granules and two small plastic sachets.

Fiscal Lacaya: –

For the record, Your Honor, all these plastic sachets were already marked.

Court: –

Alright.

⁵⁸ TSN, October 16, 2003, p. 10-11; *rollo*, pp. 142-143.

⁵⁹ TSN, October 16, 2003.

X X X X

- Q You said that you brought the accused to the police station for investigation; now, at the police station, where was the poseur buyer?
- A He was at the second floor of the police station, sir.
- Q Now, and you said that he was able to buy shabu during the entrapment from Jasper Tan, where was that shabu?
- A He turned it over to us.
- Q And that was included also in the receipt of properties seized?
- A Yes, sir.
- Q So with the several sachets that were recovered from the possession of the accused containing white crystalline granules believed to be shabu or [methamphetamine] hydrochloride, a regulated drug, what did you do with these sachets?
- A We turned over the shabu confiscated to the person who issued the search warrant.⁶⁰

Not only must the identity and integrity of the *corpus delicti* be shown to have been preserved, evidence must also definitively clarify that the illegal drugs presented in court are the same illegal drugs recovered from the accused. The prosecution failed to account for this lapse in this case. Nowhere in PO2 Jose's testimony did he identify the seized items to be the same ones presented in court as he did not identify the seized items. Inarguably, these gaps in the chain of custody render the identity and integrity of the *corpus delicti* dubious.⁶¹

We also note that in Criminal Case No. 11265, the Information states that the *shabu* weighs 0.10 grams. However, according to PSI Susan, the net weight of the *shabu* is 0.0628 grams, and its gross weight is 0.1629 grams.⁶² With respect to Criminal Case No. 11266, the Information states the *shabu* weighs 2.74 grams but PSI Susan stated that the net weight of the *shabu* was 2.0946, and its gross weight is 2.7643 grams.⁶³ The Court cannot gloss over these discrepancies in the weight of the seized drugs.

Accordingly, whatever evidence the police officers recovered from Jasper lose their integrity and evidentiary value because of the violation of the mandatory requirements of the law. The irregular conduct of buy-bust operation as well as the procedural lapses the police officers committed created significant doubt as to Jasper's guilt of the crimes of Illegal Sale and

⁶⁰ TSN, October 16, 2003, pp. 9 and 11; *rollo*, pp. 141 and 143.

⁶¹ *Lopez v. People*, 725 Phil. 499, 512 (2014).

⁶² TSN, February 17, 2003, p. 6; *rollo*, p. 166.

⁶³ TSN, February 17, 2003, p. 5; *rollo*, p. 165.

Illegal Possession of Dangerous Drugs under Sections 15 and 16, Article III of RA No. 6425.

The People, however, insists that Jasper did not raise these issues and the inadmissibility of the evidence during trial.⁶⁴ This argument is untenable. It is a well-established rule that in criminal proceedings, an appeal throws the whole case open for review. In fact, it becomes the duty of the Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.⁶⁵ It is axiomatic that an appeal in criminal cases confers upon the Court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from.⁶⁶ Therefore, even at this stage of the proceedings, it is imperative for proper chain of custody to be established in order to affirm the conviction of an accused because a conviction must prudently rest on the moral certainty that guilt has been proven beyond reasonable doubt.⁶⁷

*The Search Conducted and the
Admissibility of the Seized Items*

The place to be searched based on the search warrant is Jasper's room inside a house located at Magsaysay Street, corner Tomas Claudio Street where the accused resides.⁶⁸ As found by the trial court, the transaction between Jasper and the *poseur-buyer* was made at the gate of Jasper's house. After the buy-bust operation, the police officers handcuffed Jasper, and was served a search warrant. Thereafter, the police officers searched his room in the presence of the barangay captain.⁶⁹ There is no evidence on record showing that Jasper was brought to his room to observe the search of the premises.

A reading of PO2 Jose's testimony reveals that Jasper did not witness the search conducted. His testimony in relation to the search conducted reads in part:

Q Now, to whom did you give this marked money?

A To our poseur buyer.

Q And then what happened after that?

A They had a deal.

Q And where did the dealing or transaction occur between Jasper Tan and your poseur buyer?

⁶⁴ *Rollo*, p. 223.

⁶⁵ *Estarija v. People*, 619 Phil. 457, 462 (2009).

⁶⁶ *People v. Miranda*, 824 Phil. 1042, 1057 (2018).

⁶⁷ *Id.* at 1050-1051.

⁶⁸ *Rollo*, p. 35.

⁶⁹ *Id.* at 33.

A At the gate of their residence, sir.

x x x x

Q After the transaction was consummated what happened?

A We served the search warrant against Jasper Tan, sir.

x x x x

Q And then what did you make?

A Served the search warrant, sir.

Q You made arrest?

A Yes, sir.

x x x x

Q And you handed the search warrant to him personally?

A Yes, sir.

x x x x

Q Now, did you also search his person as an incident of lawful arrest?

A **We handcuffed him before we searched.**

x x x x

Q Now, upon service of the search warrant and in obedience to the mandate of the Court, what did you do after that?

A We fetched Hon. Emerenciana Velasco to go to their house.

x x x x

Q So after Barangay Captain Velasco arrived what transpired?

A We started to search his room, sir.

Q Now, where is his room located in relation to the house?

A At the second floor of their residence, sir.

x x x x

Q **And when you made the search it was with the presence of Barangay Captain Velasco?**

A **Yes, sir.**

x x x x

Q So after these illegal items were seized from the accused Jasper Tan by virtue of the search warrant, what did you do after that?



A We brought him to the police station, sir.⁷⁰ (Emphases supplied.)

The evidence points to only the barangay captain witnessing the search. Such a procedure violates Section 8 (formerly Section 7), Rule 126 of the Rules of Court which specifically provides that “*no search of a house, room or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.*” Only in the absence of either the lawful occupant of the premises or any member of his family can the search be observed by two (2) witnesses of sufficient age and discretion residing in the same locality. The police officers do not have the discretion to substitute their choice of witness, the barangay captain in this case, for those witnesses prescribed by the rules.⁷¹

Failure to comply with the safeguards provided by law in implementing the search warrant makes the search unreasonable. Thus, the exclusionary rule applies, *i.e.*, any evidence obtained in violation of this constitutional mandate is inadmissible in any proceeding for any purpose. We emphasize that the exclusionary rule ensures that the fundamental rights to one’s person, houses, papers, and effects are not lightly infringed upon and are upheld.⁷² This requirement is intended to guarantee that the implementing officers will not act arbitrarily which will result to the desecration of the right enshrined in our Constitution.⁷³ Violation of this rule is, in fact, punishable under Article 130 of the Revised Penal Code,⁷⁴ which provides:

ART. 130. *Searching domicile without witnesses.* — The penalty of *arresto mayor* in its medium and maximum periods shall be imposed upon a public officer or employee who, in cases where a search is proper, shall search the domicile, papers or other belongings of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality.

Without the confiscated *shabu*, no evidence is left to convict Jasper. An acquittal for both charges is warranted.

FOR THESE REASONS, the petition is **GRANTED**, and the assailed Court of Appeals’ Decision dated February 14, 2017 in CA-G.R. CR No. 01396 is **REVERSED AND SET ASIDE**. Petitioner Jasper Tan y Sia is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause. Let an entry of judgment immediately issue.

⁷⁰ TSN, October 16, 2003, pp. 7-10; *rollo*, pp. 139-142.

⁷¹ *People v. Go*, 457 Phil. 885, 915 (2003).

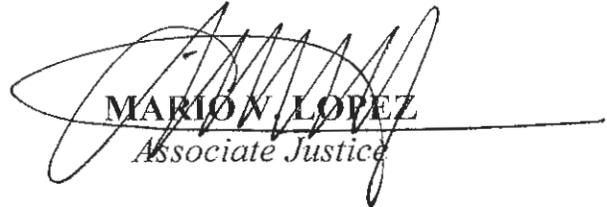
⁷² *Id.* at 917.

⁷³ *Dabon v. People*, 824 Phil. 108, 118 (2018).

⁷⁴ *People v. Gesmundo*, 292-A Phil. 20, 29 (1993).

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

SO ORDERED.



MARION LOPEZ
Associate Justice

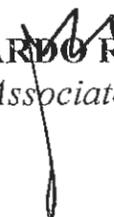
WE CONCUR:



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



AMY C. LAZARO-JAVIER
Associate Justice



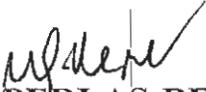
RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

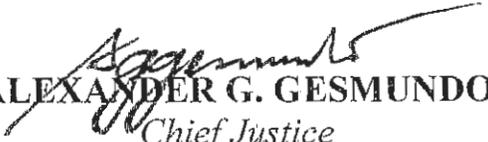
A T T E S T A T I O N

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


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice