

## FIRST DIVISION

[ G.R. No. 219175, December 14, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
AMRODING MACUD Y DIMAAMPAO, ACCUSED-APPELLANT.**

### DECISION

**DEL CASTILLO, J.:**

Before the Court is the appeal<sup>[1]</sup> of accused Amroding Macud y Dimaampao a.k.a. "Ambro" (Macud) seeking the reversal of the Decision<sup>[2]</sup> dated July 31, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06239. The CA affirmed the Judgment<sup>[3]</sup> dated April 30, 2013 of the Regional Trial Court (RTC), Branch 164, Pasig City in Criminal Case No. 17847-D. The RTC convicted Macud of violating Section 5 of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, as amended.

#### *The Facts*

Through an Amended Information dated January 31, 2012, Macud and his co-accused, Mohammad Khair M. Bayabao a.k.a. "Khalil" (Bayabao), were charged with the offense of illegal sale of dangerous drugs penalized under Section 5 of RA No. 9165, allegedly committed in the following manner:

On or about January 10, 2012, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, and not being lawfully authorized to sell, possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to Police Officer Lorenzo S. Catarata, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing eight (8) centigrams (0.08 gram) marked as "CATS 1-10-12 with signature", which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drugs, in violation of the said law.

Contrary to law.<sup>[4]</sup>

Bayabao was not arrested and, to this day, remains at large.

During the arraignment, Macud (assisted by a lawyer from the Public Attorney's Office) pleaded not guilty to the offense charged.<sup>[5]</sup> After the pre-trial proceedings were conducted, trial on the merits ensued.<sup>[6]</sup>

#### *The Prosecution's Evidence*

The prosecution's case revolves around its claim that the charge against Macud arose from a legitimate buy-bust operation. It presented as its witnesses (1) Police Officer 2 Lorenzo S. Catarata (PO2 Catarata), (2) Police Chief Inspector Lourdeliza G. Cejes (PCI Cejes), (3) Police Officer 2 Jay Santos Francisco (PO2 Francisco), and (4) Police Officer 2 Jeffrey Male (PO2 Male).

**PO2 Catarata** testified on the acts constituting the offense charged and leading to the apprehension of Macud. He narrated that, at about 6:00 p.m. of January 10, 2012, the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of Pasig City, led by Police Chief Inspector Joel Q. Quintero (PCI Quintero), held a briefing for the conduct of a buy-bust operation at Vicper Compound, *Barangay Malinao, Pasig City.*<sup>[7]</sup> The operation was supposedly in response to confidential information received by the SAID-SOTG that illegal drug activities were being done in the area. A team was formed to conduct the operation, which included PO2 Catarata, PO2 Francisco, PO2 Male, and three other police officers.<sup>[8]</sup> PO2 Catarata was to act as the poseur buyer and was given a P500.00 bill on which he placed the mark "CATS," representing his surname.<sup>[9]</sup>

Accompanied by their informant, the team proceeded to and arrived at the Vicper Compound at about 8:20p.m. of the same day. As the other team members spread out and positioned themselves, PO2 Catarata and the informant proceeded to the house of on "Khalil" (later identified as the co-accused Bayabao). When they approached the house, they saw Macud standing outside of it and inquired if "Khalil" was inside because they wanted to buy "tres" or P300.00 worth of *shabu*. In reply, Macud nodded and asked for the money. PO2 Catarata then gave the marked P500.00 bill to Macud. After receiving the money, Macud went upstairs to the second floor of the house where "Khalil" was. PO2 Catarata claimed that he heard Macud and "Khalil" talking but did not understand what they said as they were speaking in their ventacular. He then saw Macud hand over to "Khalil" the P500.00 bill, and "Khalil" in turn gave Macud a small plastic sachet. Macud thereafter went downstairs and gave the plastic sachet to PO2 Catarata. It was at this point that PO2 Catarata arrested Macud, introduced himself as a police officer, and read Macud his rights. The other team members tried to chase "Khalil" but he was able to flee, allegedly with the marked P500.00 bill.<sup>[10]</sup>

PO2 Catarata further testified on what he did with the plastic sachet that Macud gave him after the buy-bust operation. He claimed that, immediately after arresting Macud, he placed the mark "CATS 1-10-12" and his signature on the single heat-sealed transparent plastic sachet containing white crystalline substance and then prepared the Inventory of Seized Evidence, which Macud refused to sign.<sup>[11]</sup> PO2 Catarata and the team thereafter brought Macud and the plastic sachet, first, to the police station for the preparation of documents, and second, to the Crime Laboratory Office in Marikina City for the examination of Macud and the contents of the plastic sachet.<sup>[12]</sup>

**PCI Cejes** testified on the delivery and receipt of the plastic sachet and the examination of its contents. She stated that she was the Forensic Chemist assigned at the Crime Laboratory Office in Marikina City. At about 11:15 p.m. of January 10, 2012, she received from PO2 Francisco a Request for Laboratory Examination of a specimen contained in one heat-sealed transparent plastic sachet marked "CATS 1-10-12" with signature, along with the mentioned specimen. She proceeded with the laboratory examination of the specimen, which she marked as "Exhibit A, D-0010-2012E LGC," and found that it tested positive for methamphetamine hydrochloride or *shabu*. She then prepared Physical Science Report No. D-0010-2012E where she listed her findings on the submitted specimen.<sup>[13]</sup>

The testimonies of **PO2 Francisco** and **PO2 Male** were dispensed with after the prosecution and the defense agreed on the following stipulation of facts:

As to PO2 Francisco:

1. That he was the investigator in the present case;
2. That, as investigator, he prepared the Booking Sheet and Arrest Report of the accused, the Request for Laboratory Examination of the specimen, and the Request for Drug Test of the accused;
3. That he took pictures of the accused and the seized evidence at the police station;

4. That he delivered the Request for Laboratory Examination and the specimen subject of the request, and the Request for Drug Test of the accused to the Crime Laboratory Office in Marikina City; and
5. That he has no personal knowledge of the circumstances surrounding the arrest of the accused and the origin and source of the specimen.<sup>[14]</sup>

As to PO2 Male:

1. That he was the police officer who coordinated with the Philippine Drug Enforcement Agency (PDEA).<sup>[15]</sup>

In addition to the above testimonies, the prosecution offered the following documentary and object evidence:<sup>[16]</sup>

- Exhibit A and its Request for Laboratory Examination dated January 10, 2012<sup>[17]</sup>
- Exhibit B Improvised brown envelope with markings "D-10-2012 E LGC"
- Exhibit B-1 One (1) heat-sealed transparent plastic sachet containing 0.08 gram of white crystalline substance, with markings "CATS 1-10-12" and signature
- Exhibit C and its Physical Sciences Report No. DD-0010-2012E<sup>[18]</sup>
- Exhibit D and its Sinumpaang Salaysay ng Pag-Aresto<sup>[19]</sup>
- Exhibit E and its Inventory of Seized Evidence<sup>[20]</sup>
- Exhibit F Booking Sheet and Arrest Report of the accused<sup>[21]</sup>
- Exhibit G Photograph of the accused after he was arrested<sup>[22]</sup>
- Exhibit H Photograph of one (1) heat-sealed transparent plastic sachet containing 0.08 gram of white crystalline substance, with markings "CATS 1-10-12" and signature<sup>[23]</sup>
- Exhibit I Request for Drug Test<sup>[24]</sup>
- Exhibit J and its Request for Laboratory Examination<sup>[25]</sup>
- Exhibit L Pre-Operation Report<sup>[26]</sup>
- Exhibit M Coordination Sheet<sup>[27]</sup>

### ***The Accused's Evidence***

Macud denied the charges against him and raised as defense frame up/extortion by the police officers.

Macud stated that he earned a living by selling toys in the market. On January 10, 2012, at about 8:20p.m., he was walking along Vieros Street on his way to the market when he saw five men entering an alley that led to the Vicper Compound. One of the men asked if he knew "Cali" to which he replied "no;" the men then continued walking. A few seconds after, a commotion ensued but he continued on his way. Suddenly, two of the five men returned, held him, and ordered him to join them to their office for questioning. The men then brought him to the Pasig City Motorpool where they frisked him and demanded P50,000.00 from him, otherwise, they threatened to file a case against him. When Macud replied that he had no such amount, he was brought to Marikina City for drug test and medical examination. Thereafter, he was detained in jail for about 21 days until he was transferred to Nagpayong.<sup>[28]</sup>

Macud claimed that he does not know the men and saw them for the first time only during their encounter on January 10, 2012. He said that prior to his arrest, he had been living at Vicper Compound for about three months<sup>[29]</sup> and he previously came from Mindanao.<sup>[30]</sup>

### **Ruling of the RTC and the CA**

The RTC found that the prosecution's evidence sufficiently established that Macud committed the offense charged. Macud was caught in *flagrante delicto* illegally selling *shabu*, a dangerous drug. Accordingly, it rendered judgment finding Macud guilty beyond reasonable doubt of the offense of illegal sale of dangerous drugs, and sentenced him to life imprisonment and to pay a fine of P500,000.00.<sup>[31]</sup>

As mentioned, the CA affirmed the RTC's guilty verdict after finding Macud's appeal unmeritorious. Like the RTC, the CA found that the prosecution's evidence sufficiently established that the elements of the offense of illegal sale of dangerous drugs and that Macud was liable therefor.<sup>[32]</sup>

The CA did not agree with Macud's contention that the police officers' failure to comply with Section 21 of RA No. 9165 on the custody and disposition of the seized drugs tainted the buy-bust operation and rendered the evidence inadmissible. It declared that there was substantial compliance with the procedure to establish an unbroken chain of custody which preserved the integrity and evidentiary value of the seized evidence.<sup>[33]</sup>

Moreover, the CA did not find credible Macud's claim of frame up/extortion by the police officers. This claim was uncorroborated and unsupported by any proof of ill motive on the part of the police officers why they would falsely testify against Macud. The CA considered Macud's defense as a mere alibi which cannot stand against the clear and positive testimony of PO2 Catarata who was performing his job when he caught Macud illegally selling *shabu*.<sup>[34]</sup>

### **The Appeal**

Through the present appeal, Macud seeks the reversal of his conviction by claiming that his guilt was not proven beyond reasonable doubt.<sup>[35]</sup> He alleges that no legitimate buy-bust operation was conducted; instead, what transpired was an extortion attempt. In support of this allegation, he refers to the failure of the police officers to comply with the procedural requirements under Section 21 of RA No. 9165 and of the prosecution to present the marked money used in the alleged buy-bust operation.<sup>[36]</sup>

The People, represented by the Solicitor General, disagrees and contends that all the elements of the offense charged were duly proved.<sup>[37]</sup> It claimed that Macud was arrested through a valid buy-bust operation where he was caught in *flagrante* selling *shabu*. Hence, the appeal must be denied and the conviction affirmed.

### **The Court's Ruling**

**The Court grants the appeal and reverses the CA Decision that affirmed Macud's conviction for the offense charged.** We find that the integrity and relevance of the prosecution's evidence have been compromised by the failure of the police to preserve the chain of custody of the dangerous drug subject of the crime charged and, thus, insufficient to support Macud's conviction therefor.

***The preservation of the chain of custody is essential in a successful prosecution for the illegal sale of dangerous drug***

In every criminal prosecution, the Constitution affords the accused presumption of innocence

until his or her guilt for the crime charged is proven beyond reasonable doubt.<sup>[38]</sup> The prosecution bears the burden of overcoming this presumption and proving the liability of the accused by presenting evidence showing that all the elements of the crime charged are present.<sup>[39]</sup>

To sustain a conviction for the offense, of illegal sale of dangerous drug as penalized under Section 5 of RA No. 9165, the following elements must be established:

- "1) the identity of the buyer and the seller, the object, and the consideration; and
- 2) the delivery of the thing sold and the payment therefor."<sup>[40]</sup>

At this point, we address Macud's contention that the failure to present the marked P500.00 bill used in the illegal sale of dangerous drugs is fatal to the prosecution's case. The failure to present the marked money in evidence, by itself, is not material since its absence will not necessarily disprove the transaction. "[N]either law nor jurisprudence requires the presentation of [the] money used in [the] buy-bust operation."<sup>[41]</sup> We declared in *People v. Rebotazo* what evidence has to be presented in prosecuting a violation of Section 5 of RA No. 9165:

in prosecuting a case for the sale of dangerous drugs, the failure to present marked money does not create a hiatus in the evidence for the prosecution, **as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.**<sup>[42]</sup> (Emphasis supplied)

Evidence must be shown that the sale transaction transpired, coupled with the presentation of the *corpus delicti*, i.e., the body or substance of the crime establishing its commission.<sup>[43]</sup> In a charge for illegal sale of dangerous drugs, the *corpus delicti* is the dangerous drug subject of the transaction.<sup>[44]</sup>

Section 21 of RA No. 9165 provides a special rule on the handling of items seized and confiscated in dangerous drugs cases. It establishes a **chain of custody rule** which aims to preserve the integrity of the items to be used in prosecutions under the law.<sup>[45]</sup> The adoption of a special rule in the handling of the dangerous drugs in particular is necessitated by the nature of the dangerous drug itself which is likely to be tampered, altered, contaminated, or substituted. As the Court explained in *Mallillin v. People*<sup>[46]</sup>.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. **The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing.** Hence, in authenticating the same, a **standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.**<sup>[47]</sup> (Emphasis supplied)

Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: "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 from the forensic chemist to the court."

With regard the first two links, Section 21(1) of RA No. 9165<sup>[49]</sup> prescribes the procedure to be observed immediately after the seizure and confiscation of the dangerous drugs. It reads:

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

- (1) The apprehending team having initial custody and control of the drugs shall, *immediately after seizure and confiscation, physically inventory and photograph* the same **in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, **or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)

x x x x

The law requires that, immediately after the seizure and confiscation of the dangerous drugs, the apprehending team having initial custody and control of the dangerous drugs shall **physically inventory and photograph** the same. **Both acts must be done in the presence of the following persons:**

1. the accused or his/her representative or counsel;
2. a representative from the media;
3. a representative from the Department of Justice (DOJ); and
4. any elected public official.

The witnesses shall then sign the inventory and be given copies thereof.

The above procedure is supplemented by the Implementing Rules and Regulations (IRR) of RA No. 9165.<sup>[50]</sup> Under Section 21(a) of the IRR, the physical inventory and photograph of the items seized shall be conducted where the search warrant is served; otherwise, in case of warrantless seizures, these shall be, conducted at the nearest police station or at the nearest office of the apprehending officer/team.<sup>[51]</sup>

Despite the mandatory language of the law, rigid compliance with the above procedure is not expected. For this reason, the last proviso of Section 21(a) of the IRR states 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." The prosecution must thus be able to explain the reasons behind the procedural lapses and to prove as facts the grounds raised to justify non compliance.<sup>[52]</sup> Moreover, it must show that the integrity and evidentiary value of the seized evidence must have been preserved.<sup>[53]</sup>

***There was a break in the chain of custody of the seized dangerous drug which the prosecution failed to explain***

The Court now proceeds to determine whether the laws and rules discussed have been complied with in the present case.

The chain of custody began with PO2 Catarata who testified that he received from Macud a plastic sachet containing white crystalline substance after he indicated interest to buy P300.00 worth of *shabu* and handed over the marked P500.00 bill. Upon receipt of the plastic sachet, PO2 Catarata said he arrested Macud and promptly prepared the Inventory of Seized Evidence.

According to PO2 Catarata, he had custody of the plastic sachet from the time Macud gave it to him up to the time it was turned over to the Criminal Laboratory Office in Marikina for examination:

PROS. MADAMBA:

Q: By the way, Mr. Witness, you are the one who is in custody of the transparent plastic sachet at the time that you arrest [sic] the accused?

[PO2 CATARATA]

A: Yes, ma'am.

Q: At the time you were at the office[,] **who is in custody of the evidence?**

A: **From the start when I was able to confiscate it [sic] was in my custody until it was delivered to the Crime Laboratory.**

**Q: So who gave the specimen to the Crime Laboratory?**

A: **I was the one.**<sup>[54]</sup> (Emphasis supplied)

PO2 Catarata's testimony, however, is contradicted by that of PCI Cejes - the forensic chemist in the Crime Laboratory Office, who stated that she received both the Request for Laboratory Examination and the specimen, not from PO2 Catarata, but from PO2 Francisco:

[PROS. MADAMBA:]

Q: On that day, did you receive any document and specimens [sic] with regard to this case?

[PCI CEJES]

A: Yes, ma'am. **I received request for laboratory examination from [PO2] Francisco from the Pasig City Police Station and together with the request is one heat sealed plastic sachet containing white crystalline substance.**

Q: Please show to us the evidence that it was received by your office?

A: There is a stamp receipt located at the lower portion of the document and in that stamp receipt indicates the case number and the date and time received and the person who delivered. **It was PO2 Francisco**, and my name is written in the received by [sic] portion, PCI Cejes.

x x x x

Q: You said it was not you who put the stamp mark receipt?

A: It was the duty recording clerk. The specimen was given to me by PO2 Francisco and I instructed the... (discontinued).

COURT:

The request for laboratory examination?

The specimen, Your Honor, one heat-sealed transparent plastic sachet.

x x x x

RE-DIRECT EXAMINATION BY PROS. MADAMBA:

Q: What is your standard operating procedure upon receiving the specimen, subject of the request for laboratory examination?

A: Upon receiving the request for laboratory examination and the specimen, the duty recording clerk will record the documents that would be received by the office and he will put the receipt and he will write entries on the document, while the specimen will be handed over to the forensic chemist who is the duty officer for that particular case.

Q: Do you know the reason why he put your name PCI Cejes as received by?

ATTY. AMPONG III:

She will be incompetent.

PROS. MADAMBA:

If she knows.

COURT:

Witness may answer.

A: Because, I am the duty forensic chemist and **I was the one who received the specimen from PO2 Francisco.**

x x x x

Q: Who received the specimen, subject of your laboratory examination, one heat sealed plastic sachet?

A: I was the one, from PO2 Francisco.<sup>[55]</sup>(Emphasis supplied)

Later in his testimony, PO2 Catarata was asked to clarify who turned over what item to PCI Cejes:

Q: Mr. Witness, as you mentioned a while ago, you're carrying that specimen from your office to the Crime Laboratory in Marikina and what about this document who handed over this to the Marikina Crime Laboratory personnel, if you can remember?

ATTY. AMPONG:

I believe, Your Honor, it [has] already been answered.

COURT:

No, witness may answer. The prosecution is asking who handed the Request for Laboratory Examination.

A: Perhaps, it was Francisco.

PROS. MADAMBA:

Q: But a while ago, when you were asked who went with you to the Crime Laboratory. you didn't mention Francisco, Mr. Witness?

A: Yes, ma'am

**Q: But now you remember it was PO2 Francisco who handed over this document?**

**A: Yes, ma'am.**

**Q: How about the specimen who handed that specimen?**

**A: I was the one**, we were together in going to the Crime Laboratory.

x x x x

[CROSS-EXAMINATION BY ATTY. AMPONG]

**Q: In fact, after that the Request for Laboratory Examination was shown to you and you saw in this stamp receipt the name of PO2 Francisco, that was the only time that you said PO2 Francisco accompanied you to the Crime Laboratory, isn't it.**

**A: Yes, sir.**

x x x x

**Q: What is that something that PO2 Francisco handed to the receiving officer?**

**A: Document, sir.**

**Q: He was the one who handed that document but you were the one who handed the plastic sachet to the receiving officer, correct?**

**A: Yes, sir.<sup>[56]</sup>** (Emphasis supplied)

While no one is expected to have a perfect memory, we find more credible PCI Cejes' straightforward and consistent statement that it was PO2 Francisco who handed her both the document entitled Request for Laboratory Examination and the specimen subject of the request, *i.e.*, the plastic sachet with *shabu*. Indeed, this was among the facts that the parties stipulated on with regard the testimony of PO2 Francisco:

x x x (4) that he was the one who delivered the request for laboratory examination together with the specimen stated thereon, and the request for drug test to the Crime Laboratory Service in Marikina City; x x x<sup>[57]</sup>

**There is thus a break in the chain of custody of the dangerous drug that was never explained by the prosecution, even when the opportunity to do so arose. Nothing in the records showed when, how, and why the custody of the plastic sachet was transferred from PO2 Catarata to PO2 Francisco.** We emphasized in *Mallillin v. People*<sup>[58]</sup> how the chain of custody must be explained:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.** (Emphasis supplied)

It may nevertheless be argued that the identity and integrity of the *corpus delicti* was preserved, since the plastic sachet that PO2 Catarata, PO2 Francisco, PCI Cejes had all bore the marking "CATS 1-10-12" and PO2 Catarata's signature, suggesting that they all handed the same item that was seized from Macud. Though such an explanation is plausible, we note that there are other significant lapses in the prosecution's evidence that - viewed as a whole - cast reasonable doubt on its case against Macud.

***There was an unjust failure to comply with  
the procedure prescribed under Section 21,  
RA No. 9165***

The prosecution never contested that the police officers failed to comply with Section 21(1) of RA No. 9165 and Section 21(a) of its IRR. The lapses constituted of the following:

first, the absence of a representative of the media, the DOJ, and any elected public official to witness the marking and physical inventory of the seized drugs; and

*second*, although the marking and physical inventory of the seized drugs were done immediately after the arrest, the photograph was done *after* the operation and in the police station by PO2 Francisco,<sup>[59]</sup> also without the requisite persons who should have witnessed the act.

When asked to explain why there was failure to comply with the procedural requirements, PO2 Catarata simply said that doing so could compromise the buy-bust operation:

COURT:

Q: Mr. Witness, why in the inventory receipt there is no representative from PDEA, from barangay, Department of Justice and media?

WITNESS:

A: We have no companion, your Honor.

COURT:

Q: You did not coordinate with the barangay of Vicper Compound?

A: Yes, your Honor.

COURT:

Q: Why?

WITNESS:

**A: Because if we will coordinate it might compromise the operation, your Honor.**

COURT:

Witness, you're [excused].<sup>[60]</sup> (Emphasis supplied)

We find this justification insufficient. Other than PO2 Catarata's bare allegation that coordination with the local officials could have compromised the buy-bust operation, the prosecution offered no factual evidence to substantiate this claim. Even if the claim were true, there is no requirement under the law that the elected public official who should witness the operation must be one of those elected in the same locality where the operation is conducted so as not to compromise the police operation in the area. This is clear from the wordings of the law itself which says "*any* elected public official."<sup>[61]</sup>

We cannot even declare that there was substantial compliance with the law in this case as the police officers invited no other person to witness the procedures that were done *after* the buy-bust operation, *i.e.*, the marking, inventory, and photography of the seized drugs. There was no representative of the media or the DOJ and no allegation that these people could similarly compromise the operation if they had been informed of and present before, during, and after the operation.

The presence of the persons who should witness the post-operation procedures is necessary to

insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.<sup>[62]</sup> The insulating presence of such witnesses would have preserved an unbroken chain of custody.<sup>[63]</sup> We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained. In *People v. Dela Cruz*<sup>[64]</sup> where there was a similar failure to comply with Section 21 of RA No. 9165, the Court declared:

x x x This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. We resolve the doubt in the integrity and identity of the *corpus delicti* in favor of appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt. Considering that the prosecution failed to present the required quantum of evidence, appellants acquittal is in order.<sup>[65]</sup>

As in *Dela Cruz*, and in view of the foregoing, the Court finds the acquittal of Macud in order.

***The prosecution cannot rely on the presumption of regularity in the performance of official functions and the weakness of the defense's evidence to bolster its case***

Any doubt on the conduct of the police operations cannot be resolved in the prosecution's favor by relying on the presumption of regularity in the performance of official functions. The failure to observe the proper procedure negates the operation of the regularity accorded to police officers.<sup>[66]</sup> Moreover, to allow the presumption to prevail notwithstanding clear lapses on the part of the police is to negate the safeguards precisely placed by the law to ensure that no abuse is committed.

Macud may not have offered much by way of defense; he simply denied the charges and claimed that it was nothing but an extortion attempt by the police. Nevertheless, the prosecution cannot rely on the weaknesses of the defense's evidence to bolster its case. "If the prosecution cannot establish, in the first place, the [accused's] guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf in fact never arises."<sup>[67]</sup>

We recognize the pernicious effects of dangerous drugs in our society, but the effort to defeat or eradicate these cannot trample on the constitutional rights of individuals, particularly those at the margins of our society who are prone to abuse at the hands of the armed and uniformed men of the State. Time and again, we have exhorted courts "to be extra vigilant in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses."<sup>[68]</sup> This case in particular exhibits how a minuscule amount - 0.08 gram - of drugs could have cost a man his liberty for a lifetime due a bungled up buy-bust operation.

We thus end our ruling by reiterating our words in *People v. Holgado*:<sup>[69]</sup>

It is lamentable that while our dockets are dogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for minuscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the

overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.

**WHEREFORE**, premises considered, the Decision dated July 31, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 06239 is **REVERSED and SET ASIDE**. Accused-appellant Amroding Macud y Dimaampao is hereby **ACQUITTED** for the 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 a copy of this Decision 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 days from receipt of this Decision the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drugs Enforcement Agency for their information.

**SO ORDERED.**

*Sereno, C.J., (Chairperson), Leonardo-De Castro, Perlas-Bernabe, [\** and Tijam, JJ., concur.

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[\*] Designated as additional member per October 18, 2017 raffle vice J. Jardeleza who recused from the case due to prior participation as Solicitor General.

[1] Notice of Appeal, *rollo*, pp. 14-16.

[2] CA *rollo*, pp. 91-102; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser.

[3] Records, pp. 83-90; penned by Presiding Judge Jennifer A. Pilar.

[4] Id. at 24.

[5] Id. at 31.

[6] Id. at 34.

[7] CA *rollo*, p. 93.

[8] Identified as Special Police Officer 1 Rescue, Police Officer 1 Reginald Layug, and Police Officer 2 Victorinio L. Oreiro, records, p. 84; CA *rollo*, p. 93.

[9] CA *rollo*, p. 93.

[10] Id.

[11] Id.

[12] Id. at 93-94.

[13] Id. at 92-93.

[14] Records, p. 84; CA *rollo*, p. 94.

[15]

Id.; id.

[16] Records, p. 86.

[17] Id. at 65.

[18] Id. at 66.

[19] Id. at 67.

[20] Id. at 68.

[21] Id. at 69.

[22] Id. at 70.

[23] Id.

[24] Id. at 71.

[25] Id. at 72.

[26] Id. at 73.

[27] Id. at 74.

[28] CA *rollo*, p. 94.

[29] TSN, April 3, 2013, p. 9.

[30] Id.

[31] Records, p. 90.

[32] CA *rollo*, p. 97.

[33] Id. at 98-99.

[34] Id. at 101.

[35] Per Manifestation dated October 16, 2015, Macud adopts the Appellant's Brief which he filed before the CA as his Supplemental Brief and repleads the allegations therein, *rollo*, p. 21.

[36] CA *rollo*, pp. 51-52.

[37] Per Manifestation and Motion dated October 22, 2015, the Plaintiff-Appellee adopts the Appellee's Brief which it filed before the CA as its Supplemental Brief and repleads the allegations therein, *rollo*, pp. 25-27.

[38] CONSTITUTION, Article III, Section 14(2).

[39] *People v. Garcia*, 599 Phil. 416, 426 (2009).

[40] Id.

[41] *People v. Rebotazo*, 711 Phil. 150, 163-164 (2013).

[42] Id. at 164.

[43] Id.

[44] *People v. Dela Cruz*, 744 Phil. 816, 827-30 (2014); *People v. Mendoza*, 736 Phil. 749, 760 (2014).

[45] *People v. Mendoza*, supra at 759-760.

[46] 576 Phil. 576 (2008).

[47] Id. at 588-589.

[48] *People v. Holgado*, 741 Phil 78, 94-95 (2014), citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

[49] Section 21(1) was subsequently amended by RA No. 10640 in 2014 and now reads as follows:

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

1. The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the sealed items 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, 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 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.

[50] In light of the amendments introduced by RA No. 10640, the PDEA has revised its guidelines on the IRR of RA No. 9165, see Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640 and the Amendment to the Guidelines.

The relevant portion of the Guidelines, as amended, states:

- A. A. Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph "a"

of the IRR.

- A.1 The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:
  - A.1.1 The marking, physical inventory and photograph of the seized/confiscated items shall be conducted where the search warrant is served.
  - A.1.2. The marking is the placing by the apprehending officer or the poseur buyer of his/her initials and signature on the item/s seized.
  - A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.
  - A.1.4. In cases when the execution of search warrant is preceded by warrantless seizures, the marking, inventory and photograph of the items recovered from the search warrant shall be performed separately from the marking, inventory and photograph of the items seized from warrantless seizures.
  - A.1.5. The physical inventory and photograph of the seized/ confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.
  - A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.
  - A.1.7. To prevent switching or contamination, the seized items, which are fungible and indistinct in character, and which have been marked after the seizure, shall be sealed in a container or evidence bag and signed by the apprehending/ seizing officer for submission to the forensic laboratory for examination.
  - A.1.8. In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may be performed at the plantation site. Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the corpus delicti of the seized/confiscated plant sources following the chain of custody of evidence.
  - A.1.9. Noncompliance, under justifiable grounds, with the requirements of Section 21(1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.
  - A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86(a) and (b), Article IX of the IRR of RA No. 9165 shall be presented.
  - A.1.11. The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventories, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the

chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. The latter shall continue the chain as required in paragraph B.5 below.

[51] In *People v. Sanchez*, 590 Phil. 214, 241 (2008), the Court noted that, despite the distinction made by Section 21(a) of the IRR on the venue where the physical inventory and photography shall be made, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value."

[52] *People v. Beran*, 724 Phil. 788, 822 (2014).

[53] Id.

[54] TSN, July 10, 2012, p. 15.

[55] TSN, June 25, 2012, pp. 5, 10, 12-13.

[56] TSN, July 10, 2012, pp. 16-17, 22-23.

[57] Records, p. 84.

[58] Supra note 46 at 587.

[59] These were one of the stipulated facts as regards the testimony of PO2 Francisco, records, p. 84.

[60] TSN, July 10, 2012, pp. 34-35.

[61] REPUBLIC ACT No. 9165, Section 21. The Guidelines on the IRR of Section 21 of RA No. 9165, as amended by RA No. 10640 now clarifies that:

A.1.6.A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. **The elected public official is any incumbent public official regardless of the place where he/she is elected.** (Emphasis supplied)

[62] *People v. Mendoza*, supra note 46 at 761-762.

[63] Id. at 764.

[64] 591 Phil. 259 (2008).

[65] Id. at 271.

[66] *People v. Dela Cruz*, 589 Phil. 259, 272 (2008), citing *People v. Santos*, 562 Phil. 458 (2007).

[67] *People v. Sanchez*, supra note 51 at 244.

[68] *People v. Rebotazo*, supra note 41 at 162.

[69] Supra note 48 at 100.

