



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 195528

Present:

- versus -

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

JOSE CLARA y BUHAIN,
Accused-Appellant.

Promulgated:

JUL 24 2013

X ----- X

DECISION

PEREZ, J.:

This is an appeal filed by herein accused Joel Clara y Buhain (Joel) from the Decision¹ of the Court of Appeals (CA) affirming the decision of conviction rendered by the Regional Trial Court of Quezon City for violation of Section 5, Article II of R.A. No. 9165.²

The factual rendition of the prosecution follows:

Prosecution witness PO3 Leonardo R. Ramos (PO3 Ramos) narrated that he acted as a poseur-buyer in a buy-bust operation conducted by their office, the District Anti-Illegal Drug Special Task Group (DAID-SOTG) of

¹ Rollo, pp. 2-9; Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario concurring.

² An Act Instituting the Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes.

Quezon City on 12 September 2005.³ He recalled that on or about 4:00 o'clock in afternoon of the said date, a male informant came to their office with the information that a person named "Ningning" was selling drugs at 22-C Salvador Drive, Balonbato, Quezon City.⁴ Police team leader SPO2 Dante D. Nagera (SPO2 Nagera) endorsed the matter to their Chief of Office Col. Gerardo B. Ratuira (Col. Ratuira) for the conduct of a buy-bust operation.⁵ A buy-bust group was created consisting of SPO2 Nagera, PO1 Peggy Lynne V. Vargas (PO1 Vargas), PO1 Teresita B. Reyes (PO1 Reyes), PO1 Alexander A. Jimenez (PO1 Jimenez) and PO3 Ramos who was designated as the poseur-buyer.⁶ During the briefing, it was agreed upon that ₱200.00-worth of *shabu* would be bought from "Ningning" by PO3 Ramos. Before leaving for their target, PO1 Reyes prepared a Pre-Operation Report and forwarded it to the Tactical Operation Communication of Philippine Drug Enforcement Agency (PDEA) for coordination.⁷ At 8:00 o'clock in the evening, the team proceeded to the area on board three vehicles: Nissan Sentra, Toyota Corolla and owner-type jeep.⁸ Upon their arrival at 9:35 o'clock in the evening, PO3 Ramos and the informant knocked on the door of the house while the rest of the team positioned themselves ten meters away.⁹ The informant identified "Gigi" as the accused Joel, Ningning's uncle.¹⁰ Initiating a conversation, the informant introduced to Joel PO3 Ramos as a buyer of ₱200.00-peso worth of illegal drug. When PO3 Ramos asked for Ningning, Joel answered that she was upstairs. Joel asked for payment and PO3 Ramos handed the ₱200 marked money.¹¹ Joel went upstairs and called Ningning. Ningning opened the door and handed Joel a small plastic sachet of *shabu* which in turn was handed to PO3 Ramos.¹²

Thereafter, PO3 Ramos touched his head as a pre-arranged signal to prompt the back-up police officers of the consummation of the illegal sale. Immediately, the rest of the team rushed to the place to arrest Joel.¹³ Joel tried to close the door to prevent the police officers from entering the house but PO3 Ramos was able to grab him. SPO2 Nagera quickly went upstairs to arrest Ningning but the latter was able to escape apprehension.¹⁴ PO3

³ TSN, 31 July 2006, pp. 3-5; Testimony of PO3 Ramos.

⁴ Id. at 4.

⁵ Id. at 4-5.

⁶ Id. at 5; Pre-Operation/Coordination Report; A Certain Police Officer Ortiz was testified upon by Ramos as included in the team but his name appears to be nowhere in the records and Pre-Coordination Report.

⁷ Id. at 6-8.

⁸ Id. at 8-9.

⁹ TSN, 20 February 2006, p. 7; Testimony of SPO2 Nagera.

¹⁰ TSN, 31 July 2006, pp. 10-11; Testimony of PO3 Ramos.

¹¹ Id. at 11-12.

¹² Id. at 13.

¹³ Id. at 15.

¹⁴ Id. at 16.

Ramos immediately frisked Joel inside the house but failed to recover anything from him; the marked money was given to Ningning when Joel went upstairs to get the plastic sachet.¹⁵

Joel was brought to the police station and was informed by PO1 Jimenez of his constitutional rights as a consequence of his arrest.¹⁶ Afterwards, the small plastic sachet recovered was marked by PO1 Jimenez inside the station and an inventory receipt was prepared.¹⁷ PO3 Ramos clarified that the plastic sachet was in the possession of PO1 Jimenez from the place of arrest until arrival at the police station. PO3 Ramos added that PO1 Jimenez was present at the time of arrest which explained his possession of the plastic sachet containing *shabu*.¹⁸

Inside the courtroom, PO3 Ramos identified Joel as the one involved in the illegal transaction.¹⁹ He also identified the small plastic sachet of *shabu* as the subject of the illegal transaction through the marking “LRR” he placed on it.²⁰ He testified that he brought the plastic sachet containing the specimen to the crime laboratory for examination²¹ where it was tested positive for methamphetamine hydrochloride, as certified by the examining Forensic Chemist Engr. Leonard M. Jabonillo (Forensic Chemist Jabonillo) of Central Police District Crime Laboratory in his Chemistry Report.²²

SPO2 Nagera was also called to the witness stand to present his version of the events. However, some inconsistencies surfaced during his examination at the witness stand.

When asked about the gender of the informant who came to their office, he answered that the informant was a female, contradicting the statement of PO3 Ramos.²³ He also differed from the statement of PO3 Ramos when he testified that only two modes of transportation, instead of three, were used by the buy-bust team in proceeding to the target area, one Nissan Maxima and one owner-type jeep.²⁴ He also had difficulty in identifying the accused inside the court room when he was asked upon by the prosecutor to do so.²⁵

¹⁵ Id. at 17-18.

¹⁶ Id. at 18-19 and 23.

¹⁷ Id. at 20.

¹⁸ Id. at 21-22.

¹⁹ Id. at 22.

²⁰ Id. at 14.

²¹ Id. at 23.

²² Records p. 3.

²³ TSN, 20 February 2006, p. 3; Testimony of SPO2 Nagera.

²⁴ Id at 5.

²⁵ Id. at 9-10.

Further contradiction was made when SPO2 Nagera narrated that PO3 Ramos was the one holding the plastic sachet before it was turned over to PO1 Jimenez for investigation.²⁶ He also admitted in his cross examination that he never saw Ningning during the entire buy-bust operation.²⁷ Finally, when asked about on who placed the initial “LRR” on the plastic sachet, he positively identified that it was the investigator who put the same.²⁸

PO1 Jimenez was also presented in court as a prosecution witness to give details of the buy-bust operation. His version, however, also differed from the versions presented by PO3 Ramos and SPO2 Nagera. He testified that the plastic sachet confiscated was already marked by the apprehending officers when it was turned over to him for investigation, a contradiction of the statements of both PO3 Ramos and SPO2 Nagera that it was him who marked the plastic sachet with the initial “LRR.”²⁹ He positively identified that he saw the item being marked by the apprehending officers in their office.³⁰

The defense interposed denial.

Accused Joel denied any involvement in the buy-bust operation. He recalled that he was inside his house sleeping between 9:00 to 10:00 o'clock in the evening of 12 September 2005 when five uniformed police officers entered his house.³¹ They got hold of his arm and frisked him but failed to recover anything.³² The police officers did not inform him of the reason for his arrest; neither did they recite his constitutional rights. Afterwards, he was made to ride an owner type vehicle and was taken to the police station where he was only asked for his name.³³ He denied having sold drugs and having seen the marked money and plastic sachet containing *shabu*.³⁴

On cross examination, Joel was also inconsistent in portions of his testimony. He testified that all of his siblings were in the province and his only companions in the house at the time of the arrest were his nephew and niece.³⁵ However, when asked why the door was still open at around 10:00 o'clock in the evening, he replied that he was waiting for his sister.³⁶ He also

²⁶ Id. at 13-14.

²⁷ Id. at 15.

²⁸ Id. at 17.

²⁹ TSN, 23 March 2006, pp. 6-7; Testimony of PO1 Jimenez.

³⁰ Id. at 7.

³¹ TSN, 21 February 2007, pp. 3-4; Testimony of Joel.

³² Id. at 4.

³³ Id. at 5.

³⁴ Id. at 6.

³⁵ Id. at 7-8.

³⁶ Id. at 12-13.

contradicted his earlier statement that he was sleeping with his nephew and niece downstairs when in his cross examination he said that his niece was staying on the second floor of the house at the time of the arrival of the police officers.³⁷

Joel was eventually charged with Illegal Sale of Dangerous Drugs punishable under Section 5, Article II of R.A. No. 9165 before the Prosecutor's Office of Quezon City. The accusatory portion of the Information reads:

Criminal Case No. 05-136719

That on or about the 12th day of September, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, ZERO POINT ZERO SEVEN (0.07) gram of [Methamphetamine] Hydrochloride (shabu), a dangerous drug.³⁸

When arraigned, Joel pleaded not guilty to the offense charged.³⁹

During pre-trial, it was agreed upon by both parties that Forensic Chemist Jabonillo had no personal knowledge as to how the plastic sachet containing specimen positive for illegal drug came to of police officers' possession. The forensic chemist merely examined the specimen and found it to be positive for methamphetamine hydrochloride. As a consequence of these stipulations, his testimony was dispensed with by the court.⁴⁰

Ruling of the Trial Court

The trial court on 21 March 2007 found the accused guilty of the offense charged. The dispositive portion of the decision⁴¹ reads:

ACCORDINGLY, judgment is rendered finding the accused **JOEL CLARA Y BUHAIN GUILTY** beyond reasonable of the crime [in] violation of Sec. 5 of R.A. 9165 as charged (for drug pushing) and he

³⁷ Id. at 17-18.

³⁸ Records, p. 1.

³⁹ Id. at 18.

⁴⁰ Id. at 23.

⁴¹ RTC Decision, Records, pp. 74-81.

is sentenced to suffer the prescribed jail term of **Life Imprisonment** and pay a fine of **P500,000.00**.

The shabu weighing 0.07 gram involved in this case is ordered transmitted to the PDEA thru DDB for disposal in accordance with R.A. 9165.⁴²

The trial court ruled that Joel directly dealt with the poseur buyer and participated in all the stages of the illegal sale. It found conspiracy between Joel and Ningning. It pointed out that Ningning was able to escape the police dragnet while Joel was being arrested because of her familiarity as a drug operator with police operations.

The police operation and its coordination with the operatives of the PDEA would be recognized by the appellate court as legally performed.⁴³ On the contrary the prosecution's scenario that the police officers entered Joel's residence and hauled him out with no reason at all was found to be improbable.⁴⁴

Ruling of the Court of Appeals

In affirming the ruling of the trial court, the appellate court ruled that all the elements of an illegal sale of dangerous drugs were present.⁴⁵ *First*, Joel, as the seller of illegal drug, was positively identified by the poseur buyer and the police officers; *Second*, the confiscated white crystalline substance which was found by the PNP crime laboratory as positive for Methamphetamine Hydrochloride which is a dangerous drug was presented during trial; and *Lastly*, the illegal sale was for a consideration of ₱200.00 given by PO3 Ramos as poseur buyer. The appellate court further held that the non-presentation of the marked money was not fatal since the prosecution witnesses were able to establish that the ₱200.00 bill used to purchase the illegal drug was in the possession of Ningning who was able to evade arrest.⁴⁶

Our Ruling

After a careful review of the evidence, we resolve to reverse the ruling of conviction and render a judgment of acquittal in favor of the accused.

⁴² Id. at 81.

⁴³ Id. at 80.

⁴⁴ Id. at 81.

⁴⁵ *Rollo*, p. 6; CA Decision.

⁴⁶ Id. at 7.

In his Brief, the accused-appellant contested his conviction due to the inconsistencies in the prosecution's presentation of a supposed buy-bust operation, coupled with its failure to establish with certainty the chain of custody of evidence. He also argued against the presumption of regularity of performance of duties. Finally, to substantiate his innocence, he pointed out that he was not even the target person in the PDEA Coordination Report and denied any conspiracy and involvement with such target person named "Ningning."⁴⁷

In spite of the imperfect narration of events by the accused Joel, we are constrained to render a judgment of acquittal due to the lapses of the prosecution that led to its failure to discharge the burden of proof beyond reasonable doubt that the accused committed the crime.

In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.

It is basic in criminal prosecutions that an accused is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required.

Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.⁴⁸ It must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf, in which case, the presumption prevails and the accused should necessarily be acquitted.⁴⁹

In this case, the prosecution failed to overcome such presumption when it presented inconsistent versions of an illegal sale.

⁴⁷ CA rollo, p. 35; Accused-Appellant's Brief.

⁴⁸ Section 2, Rule 133, Rules of Court; *People v. Tadeapa*, G.R. No. 100354, 26 May 1995, 244 SCRA 339, 342.

⁴⁹ *People v. Capuno*, G.R. No. 185715, 19 January 2011 640 SCRA 233, 242-243 citing *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194, 207 and *People v. dela Cruz*, G.R. No. 177222, 29 October 2008, 570 SCRA, 273, 283.

PO3 Ramos identified Joel as the seller who sold to him a small plastic sachet containing *shabu* in exchange of two hundred pesos. We quote the relevant portions:

FISCAL (to witness)

Q: What happened there?

A: When we reached the house sir, we knocked at the door and alias Gigi open (sic) it.

x x x x

Q: What was the conversation with you during that time?

A: The informant first introduced me to Gigi that I will be the one to buy shabu.

Q: What was the answer of Gigi at that time?

A: He asked how much.

Q: What was your answer?

A: I said 'dos'.

Q: After informing him that you intend to buy dos of illegal drug, what happened?

A: I first asked where is Ningning.

Q: What was the answer of Gigi?

A: He said that she was upstairs.

Q: What happened after that?

A: He asked for my money, sir.

Q: Did you give the P200.00.

A: Yes sir, I gave the money.

Q: After giving that money to Gigi, what happened after that?

A: He called Ningning from up stair (sic).

Q: Did Ningning go to the place where you were talking with Gigi at that time?

A: No sir, she just open (sic) the door and handed the sachet of shabu.

x x x x

Q: When he received that from Ningning at that time, what did you do?

A: After Gigi got it he gave it to me, sir.

Q: Can you describe that item you received from Gigi that came from Ningning at that time?

A: Yes sir.

Q: Can you describe?

A: Yes sir, just a small plastic sachet.⁵⁰

PO3 Ramos initially testified that he placed his marking on the small plastic sachet he was able to buy from Joel:

Q: If that small plastic sachet is shown to you can you indentify the specimen?

A: Yes, sir.

Q: Why?

A: **Because I placed my marking.**

Q: **What marking did you place?**

A: **LRR.**

Q: Showing to you this transparent plastic sachet containing illegal drug, what can you say about that, what is the relation of that transparent plastic sachet to the plastic sachet you have just mentioned?

A: That is the sachet I was able to buy, sir.

Q: Where is the marking?

A: It was on top of the plastic sachet.⁵¹ (Emphasis supplied)

⁵⁰ CA *rollo*, pp. 69-70; Brief for the Appellee; TSN, 31 July 2006, pp. 10-13; Testimony of PO3 Ramos.

⁵¹ TSN, 31 July 2006, p. 14; Testimony of PO3 Ramos.

However, he would later present a new version on who marked the plastic sachet:

Q: Now, going [back] to the police station, other than searching, what other matters [were] taken during the arrest?

A: **The evidence that I was able to get from Ningning and it was the investigator who marked it.**

Q: Other than putting the initial on the transparent plastic sachet immediately after the arrest Mr. Witness, what was the SOP in a buy-bust operation, after taking or receiving the item from the accused during the arrest?

A: We made the inventory receipt, sir.⁵² (Emphasis supplied)

x x x x

Q: x x x. **You said that it was the investigator who made the marking in the transparent plastic sachet, where were you when the marking was placed on it?**

A: **I was in front of the investigator.**

Q: What was the marking placed?

A: LRR.⁵³ (Emphasis supplied)

x x x x

Q: **You said that the investigator placed the marking in the transparent plastic sachet and likewise he was the one who made the inventory receipt.** In what particular place that he prepared this particular document?

A: At the area, sir.

Q: What do you mean by area?

A: In front of the house of the accused, sir.

Q: **What is the name of that investigator again?**

A: **Alexander Jimenez, sir.**⁵⁴ (Emphasis supplied)

⁵² Id. at 19-20.

⁵³ Id. at 21.

⁵⁴ Id. at 22-23.

The testimony of PO3 Ramos, which apparently was given as proof of all the elements that constitute an illegal sale of drug is however, inconsistent on material points from the recollection of events of PO3 Ramos, SPO2 Nagera and PO1 Jimenez regarding the marking, handling and turnover of the plastic sachet containing the dangerous drug of *shabu*.

SPO2 Nagera narrated that it was PO1 Jimenez who marked the plastic sachet after it was handed by PO3 Ramos:

Q: What did the investigator do to shabu, Mr. Witness?

A: They placed their initial and prepared request for examination address to the Crime Laboratory sir.⁵⁵
(Emphasis supplied)

x x x x

Q: Where was PO3 Ramos when that plastic sachet, when the police investigator put the initial, Mr. Witness?

A: We were there sir.⁵⁶ (Emphasis supplied)

However, PO1 Jimenez later testified that it was PO3 Ramos who marked the plastic sachet in their office.

Q: Being the investigator you saw the item confiscated?

A: Yes, sir.

Q: Was it already marked when it was received by you?

A: It was already marked by the apprehending officers.

Q: Did you [see] it marked by the apprehending officer?

A: Yes, sir.

Q: Where?

A: In our office.⁵⁷ (Emphasis supplied)

⁵⁵ TSN, 20 February 2006, pp. 13-14; Testimony of SPO2 Nagera.

⁵⁶ Id. at 17.

⁵⁷ TSN, 23 March 2006, pp. 6-7; Testimony of PO1 Jimenez.

Contradictory statements were further made as to who between PO3 Ramos and PO1 Jimenez held the *shabu* from the time of the arrest until arrival at the police station. PO3 Ramos pointed to PO1 Jimenez in his direct examination:

Q: You said immediately after arresting and searching the accused in this case you said that you brought the accused to the police station, **who was in possession of the transparent plastic sachet from where you received that transparent plastic sachet in exchange to P200.00 going to the police station Mr. Witness?**

A: **The investigator, sir.**

Q: You mean to say that investigator was present when the accused was arrested in this case?

A: Yes sir, he was with us.⁵⁸ (Emphasis supplied)

However, SPO2 Nagera pointed to PO3 Ramos as the one in possession:

Q: **What about the shabu, who was holding it in going to the police station, Mr. Witness?**

A: **Ramos, sir.**

Q: What happened next, Mr. Witness?

A: It was turn (sic) over to the police investigator, sir.⁵⁹ (Emphasis supplied)

The clear inconsistency in the presentation of facts is fatal. It creates doubts whether the transaction really occurred or not. Though Joel's denial as a defense is weak, such cannot relieve the prosecution the burden of presenting proof beyond reasonable doubt that an illegal transaction actually took place.⁶⁰

Inconsistencies of the prosecution witnesses referring to the events that transpired in the buy-bust operation can overturn the judgment of

⁵⁸ TSN, 31 July 2006, pp. 21-22; Testimony of PO3 Ramos.

⁵⁹ TSN, 20 February 2006, p. 13; Testimony of SPO2 Nagera.

⁶⁰ *People v. Llanita*, G.R. No. 189817, 3 October 2012, 682 SCRA 288, 298-299 citing *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324 further citing *People v. Gaspar*, G.R. No. 192816, 6 July 2011, 653 SCRA 673, 686.

conviction. As held in *Zaragga v. People*,⁶¹ material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. Prosecution's failure to indubitably show the identity of the *shabu* led to the acquittal of the accused in that case.⁶²

Inconsistencies and discrepancies referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility. If the cited inconsistency has nothing to do with the elements of a crime, it does not stand as a ground to reverse a conviction.⁶³ However, in this case, the material inconsistencies are furthered by inconsistencies of the police officers on minor details. Referring back to the narration of circumstances of the buy-bust operation, SPO2 Nagera was asked about the gender of the informant who went to their office to report about the illegal activities committed by Ningning. He readily answered that the informant was a female.⁶⁴ PO3 Ramos in turn, when asked to describe what happened in the afternoon before the buy-bust operation, testified that a male informant came to their office to report about a person selling illegal drugs.⁶⁵

These conflicting statements of the prosecution effectively broke the chain of custody of evidence of the sale of dangerous drug.

Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides for the procedure to be observed in preserving the integrity of chain of custody:

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

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the

⁶¹ *Zaragga v. People*, G.R. No. 162064, 14 March 2006, 484 SCRA 639, 647-649.

⁶² *People v. Ulat*, G.R. No. 180504, 5 October 2011, 658 SCRA 695, 709.

⁶³ *People v. Villahermosa*, G.R. No. 186465, 1 June 2011, 650 SCRA 256, 276 citing *People v. Sabardan*, G.R. No. 132135, 21 May 2004, 429 SCRA 9, 19 further citing *People v. Monieva*, G.R. No. 123912, 8 June 2000, 333 SCRA 244, 252 and *People v. Ignas*, 458 Phil. 965, 988.

⁶⁴ TSN, 20 February 2006, p. 3; Testimony of SPO2 Nagera.

⁶⁵ TSN, 31 July 2006, p. 4; Testimony of PO3 Ramos.

person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given copy thereof. Provided, that the physical inventory and the photograph shall be conducted at the place where the search warrant is served; or at least the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team/officer, shall not render void and invalid such seizures of and custody over said items.

“Chain of custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and finally for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.⁶⁶

To establish the chain of custody in a buy-bust operation, the prosecution must establish the following links, namely: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁶⁷

The “*objective test*” in determining the credibility of prosecution witnesses regarding the conduct of buy-bust operation provides that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation—from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale.⁶⁸ The manner by which the initial contact was made, the offer to purchase the

⁶⁶ Dangerous Drugs Board Regulation No. 1, Series of 2002, Sec. 1 (b).

⁶⁷ *People v. Remegio*, G.R. No. 189277, 5 December 2012 citing *People v. Kamad*, G.R. No. 174198, 19 January 2010, 610 SCRA 295, 307-308 and *People v. Arriola*, G.R. No. 187736, 8 February 2012, 665 SCRA 581, 598.

⁶⁸ *People v. Ong*, G.R. No. 175940, [Formerly G.R. Nos. 155361-62], 6 February 2008, 544 SCRA 123, 132-133; *People v. Doria*, 361 Phil. 595 (1999).

drug, the payment of the buy-bust money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.⁶⁹

In view of these guiding principles, we rule that the prosecution failed to present a clear picture on how the police officers seized and marked the illegal drug recovered by the apprehending officer and how the specimen was turned over by the apprehending officer to the investigating officer.

As to the *first link of marking*, the three police officers failed to agree on who among them marked the plastic sachet, which is highly improbable if they really had a clear grasp on what really transpired on the day of operation.

PO3 Ramos testified that he placed his marking on the small plastic sachet but recanted his previous statement at the latter part of the examination and pointed out that it was the investigator PO1 Jimenez who put the marking in front of him at the area of arrest.⁷⁰ SPO2 Nagera in his testimony confirmed that it was PO1 Jimenez who put marking on the plastic sachet.⁷¹ However, PO1 Jimenez in his testimony clarified that the item confiscated were already marked by the apprehending officers when it was turned over to him in their office.⁷²

Likewise, they cannot seem to agree on the *second link* on who among them held the item confiscated from the time of arrest and confiscation until it was turned over to the investigator and the place where it was turned over.

PO3 Ramos positively pointed that it was PO1 Jimenez who took possession of the item from the time of the arrest until arrival at the police station.⁷³ However, when SPO2 Nagera was asked, he pointed out that it was PO3 Ramos who held the item from the time of the arrest until they reached the police where it was turned over to Jimenez for investigation.⁷⁴

In *Malillin v. People*,⁷⁵ it was explained that the chain of custody rule includes testimony about every link in the chain, from the moment the item

⁶⁹ Id. at 133 citing *Cabugao v. People*, G.R. No. 158033, 30 July 2004, 435 SCRA 624; *People v. Ong*, G.R. No. 137348, 21 June 2004, 432 SCRA 471, 485;

⁷⁰ TSN, 31 July 2006, pp. 14 and 20-22; Testimony of PO3 Ramos.

⁷¹ TSN, 20 February 2006, pp. 13-14 and 17; Testimony of SPO2 Nagera.

⁷² TSN, 23 March 2006, pp. 6-7; Testimony of PO1 Jimenez.

⁷³ TSN, 31 July 2006, p. 21; Testimony of PO3 Ramos.

⁷⁴ TSN, 20 February 2006, p. 13; Testimony SPO2 Nagera.

⁷⁵ G. R. No. 172953, 30 April 2008, 553 SCRA 619.

was picked up to the time it was offered in 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.⁷⁶

The inconsistent statements of the police officers generated doubt on whether the identity of the evidence seized upon apprehension is the same evidence subjected to marking and inventory then given to the Jimenez for investigation and eventually submitted by PO3 Ramos for examination by the forensic chemist.

The prosecution cannot rely on the saving clause provided under Section 21(a) of the IRR that non-compliance with the legal requirements shall not render void and invalid seizures of and custody over said items. This saving clause is applicable only if prosecution was able to prove the twin conditions of (a) existence of justifiable grounds and (b) preservation of the integrity and the evidentiary value of the items.⁷⁷ The procedural lapses in this case put to doubt the integrity of the items presented in court.

The People, through the Office of the Solicitor General, is adamant in its argument that there is a presumption of regularity in the performance of duty by police officers conducting buy-bust operation.

We agree but with qualification.

In numerous cases, we were inclined to uphold the presumption of regularity in the performance of duty of public officers.⁷⁸ However, this is not a hard-and-fast rule. It does not mean that we straight away and without a blink of the eye rule on the regularity of their performance of duties. We at all times harmonize the interest of the accused alongside the interest of the State.

Inconsistencies committed by the police officers amounting to procedural lapses in observing the chain of custody of evidence requirement effectively negated this presumption. Their inaccurate recall of events amounted to irregularities that affected the presumption and tilted the

⁷⁶ *People v. Almodiel*, G.R. No. 200951, 5 September 2012, 680 SCRA 306, 324-325.

⁷⁷ *People v. Jose Alex Secreto y Villanueva*, G.R. No. 198115, 22 February 2013.

⁷⁸ *People v. Joseph Robelo y Tungala*, G.R. No. 184181, 26 November 2012, *Dimacuha v. People*, G.R. No. 143705, 23 February 2007, 516 SCRA 513, 525, *People v. Serrano*, G.R. No. 179038, 6 May 2010, 620 SCRA 327, 338.

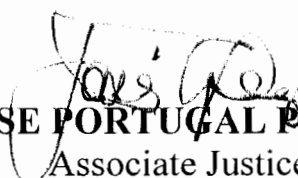
evidence in favor of the accused. The absence of improper motive tends to sustain inexistence but does not absolutely rule out false charges.

In case of conflict between the presumption of regularity of police officers and the presumption of innocence of the accused, we rule that the latter must prevail as the law imposes upon the prosecution the highest degree of proof of evidence to sustain conviction.⁷⁹

Due to foregoing flagrant inconsistencies in the testimonies of police officers which directly constitute the recollection of events of buy-bust together and failure of observance of chain of custody of evidence which effectively broke the links to sustain conviction, we rule for the acquittal of the accused.


WHEREFORE, the appeal is **GRANTED**. The 4 August 2010 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02714 affirming the judgment of conviction dated 21 March 2007 of the Regional Trial Court, Branch 103 of Quezon City is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **JOSE CLARA y BUHAIN** is hereby **ACQUITTED** and ordered immediately released from detention unless his continued confinement is warranted for some other cause or ground.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

⁷⁹ *People v. Gatlabayan*, G.R. No. 186467, 13 July 2011, 653 SCRA 803, 824 citing *People v. Pagaduan*, G.R. No. 179029, 9 August 2010, 627 SCRA 308, 326 and *People v. Magat*, G.R. No. 179939, 29 September 2008, 567 SCRA 86, 99.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice
Chairperson




ARTURO D. BRION

Associate Justice



MARIANO C. DEL CASTILLO

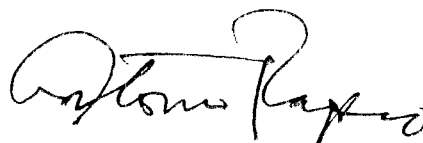
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

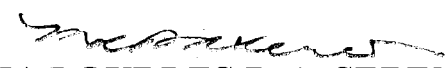


ANTONIO T. CARPIO

Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice