



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated August 3, 2022 which reads as follows:*

**“G.R. No. 257099 (*People of the Philippines v. Josephine Fangon y Gayo a.k.a. “Josie”*)**. – This Court resolves the appeal assailing the Decision<sup>1</sup> dated March 13, 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10510, which affirmed the Joint Decision<sup>2</sup> dated November 3, 2017 and the Order<sup>3</sup> dated December 22, 2017 of the Regional Trial Court, Branch 29, of San Fernando City, La Union (RTC). The RTC earlier found Josephine Fangon y Gayo a.k.a. “Josie” (Fangon) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended by R.A. No. 10640.

On December 29, 2015, an Information was filed with the RTC charging accused-appellant Fangon and Genesis Palo y Balala a.k.a. “Banong” (Palo) of violating Section 5, Article II of R.A. No. 9165 for the sale of methamphetamine hydrochloride (*shabu*), docketed as Criminal Case No. 11353.<sup>4</sup> The Information reads:

That on or about the 10<sup>th</sup> day of December, 2015, in the Municipality of Bacnotan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping with each other, without first securing the necessary permit, license or prescription from the proper government agency, did then and there willfully, unlawfully and feloniously, for and in consideration of the amount of ONE THOUSAND PESO BILL (₱ 1,000.00), with serial number 2472443, sell and deliver one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as “Shabu”, weighing ONE POINT TWO THREE FIVE THREE (1.2353) gram, to *poseur-buyer* SPO1 MARLON M. PANITAN, who posed as *poseur* thereof.

**CONTRARY TO LAW.**<sup>5</sup>

<sup>1</sup> Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Franchito N. Diamante and Walter S. Ong, concurring; *rollo*, pp. 6-14.

<sup>2</sup> Penned by Judge Asuncion Fikingas-Mandia; *id.* at 17-23.

<sup>3</sup> Records, p. 144.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.*

In a separate Information,<sup>6</sup> the subject of Criminal Case No. 11352, Palo was additionally charged with illegal possession of dangerous drugs, in violation of Section 11, Article II of R.A. No. 9165.

Upon arraignment, Fangon entered her plea of not guilty, while Palo pleaded not guilty to both charges.<sup>7</sup> During the pre-trial conference, the parties admitted the following: (1) the identity of Palo and Fangon; (2) that they were arrested on December 10, 2015 at the back portion of the Don Mariano Marcos Memorial State University (*DMMMSU*) campus cooperative building, Barangay Sapilang, Bacnotan, La Union; and (3) that both Palo and Fangon are acquainted with each other.<sup>8</sup> After conclusion of the joint pre-trial conference, joint trial on the merits commenced.<sup>9</sup>

The prosecution presented the following as witnesses: Senior Police Officer 2 Marlon Panitan (*SPO2 Panitan*);<sup>10</sup> Police Officer 1 Gemma Cayabyab (*PO1 Cayabyab*);<sup>11</sup> Forensic Chemist Police Senior Inspector Maria Theresa Amor Manuel Sobejana (*PSI Sobejana*);<sup>12</sup> Police Officer 3 Arnold Peralta (*PO3 Peralta*);<sup>13</sup> and DOJ Representative Eulogio Gapisan (*Gapisan*).<sup>14</sup> The taking of the testimony of Police Officer 3 Ferdinand Langit (*PO3 Langit*)<sup>15</sup> was dispensed with.

Based on their collective testimonies, the prosecution averred that at around 9:30 a.m. on December 10, 2015, a confidential informant (*CI*) appeared at the Bacnotan Police Station and reported to Senior Police Officer I Edward Almirol that Fangon and Palo were engaged in illegal drug pushing activities involving *shabu* at the back of the *DMMMSU* campus cooperative building. Police Senior Inspector Fredilex Marron (*PSI Marron*) then led a briefing where a buy-bust team was formed consisting of *SPO2 Panitan* as the *poseur-buyer*; *PO3 Peralta* and *PO1 Cayabyab* as his back-up operatives; and Senior Police Officer 1 Almirol, Police Officer 1 Licudan, Police Officer 3 Adonis Bayan, and Police Officer III Fontanilla as perimeter back-up operatives. *PSI Marron* gave *SPO2 Panitan* the buy-bust money, a ₱1,000.00-bill with serial number 2472443,<sup>16</sup> to which the latter placed his initials “MPP-1,” his signature, and the date. *SPO2 Panitan* then photocopied the buy-bust money.<sup>17</sup>

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<sup>6</sup> *Rollo*, p. 17.

<sup>7</sup> Records, pp. 38-41.

<sup>8</sup> *Id.* at 43.

<sup>9</sup> *Id.* at 43-47.

<sup>10</sup> TSN dated June 7, 2016, pp. 1-40.

<sup>11</sup> TSN dated August 30, 2016, pp. 1-20.

<sup>12</sup> TSN dated April 26, 2016, pp. 1-12.

<sup>13</sup> TSN dated May 16, 2017, pp. 1-24.

<sup>14</sup> TSN dated October 11, 2016, pp. 1-14.

<sup>15</sup> TSN dated February 10, 2017, pp. 1-4.

<sup>16</sup> Records, pp. 35-36.

<sup>17</sup> *Id.*

After the buy-bust team completed the preparation of the pre-operation report<sup>18</sup> and coordinated<sup>19</sup> with the Philippine Drug Enforcement Agency, the buy-bust team and the CI proceeded to the DMMMSU campus cooperative building. Upon their arrival, the members of the buy-bust team positioned themselves strategically at the back side of the building.<sup>20</sup>

When the CI saw Palo and Fangon walking towards them, the CI told SPO2 Panitan that Palo was wearing a red shirt while Fangon was wearing a blue shirt. The CI introduced SPO2 Panitan to Palo and Fangon as “Harold,” the buyer. Fangon then asked SPO2 Panitan if he had the money, and the latter answered in the affirmative. Fangon took out a big transparent plastic sachet containing white crystalline substance that was tucked in the waistband of her pants while SPO2 Panitan gave her the buy-bust money. Upon receipt of the buy-bust money, Fangon handed the plastic sachet to SPO2 Panitan. SPO2 Panitan made the pre-arranged signal of scratching his nape to indicate that the sale had been consummated, prompting PO3 Peralta, PO1 Cayabyab, and the rest of the buy-bust team to rush towards him. PO3 Peralta and PO1 Cayabyab introduced themselves as police officers and arrested Palo and Fangon. SPO2 Panitan then frisked Palo and retrieved a small transparent plastic sachet likewise containing a white crystalline substance. While this was ongoing, PO1 Cayabyab frisked Fangon and recovered from her the buy-bust money. PO1 Cayabyab then gave the buy-bust money to SPO2 Panitan.<sup>21</sup>

Upon the arrival of Barangay Captain Jimson Manuel (*Brgy. Capt. Manuel*), Gapasin, and media representative John Patrick Soriano (*Soriano*), the buy-bust team proceeded to conduct the physical inventory<sup>22</sup> of the seized drugs and buy-bust money at the place of the arrest, in the presence of Palo and Fangon. SPO2 Panitan marked the big transparent plastic sachet sold by Fangon with his initials “MPP-2,” including his signature, and the date. PO3 Peralta took photographs<sup>23</sup> of the marking and inventory.<sup>24</sup>

After SPO2 Panitan placed all the seized items inside a plastic bag, the buy-bust team brought Palo and Fangon to Bacnotan District Hospital for medical examination.<sup>25</sup> Thereafter, he was brought to the Bacnotan Police Station for investigation and documentation. The duty investigator, Police Officer 2 Savier Corpuz (*PO2 Corpuz*) then prepared the police report,<sup>26</sup> while SPO2 Panitan prepared the request for dangerous drugs examination<sup>27</sup> and the

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<sup>18</sup> *Id.* at 34.

<sup>19</sup> *Id.* at 33.

<sup>20</sup> *Id.* at 21.

<sup>21</sup> *Id.* at 24.

<sup>22</sup> *Id.* at 25.

<sup>23</sup> *Id.* at 31-32.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 25 and 28.

<sup>26</sup> *Id.* at 20.

<sup>27</sup> *Id.* at 29.

chain of custody form.<sup>28</sup> During this time, the plastic bag containing the seized drugs remained in the possession of SPO2 Panitan.<sup>29</sup>

SPO2 Panitan then delivered the request and seized drugs to the Philippine National Police Crime Laboratory Office 1 which were received by PO3 Langit. After conducting an examination on the specimens, PSI Sobejana concluded that the same is methamphetamine hydrochloride, a dangerous drug. The findings were reflected in Chemistry Report No. D-456-2015.<sup>30</sup> PSI Sobejana then turned over the seized drugs to evidence custodian Police Officer 3 Jose Bucasas (*PO3 Bucasas*).

Fangon offered her own version of the events.<sup>31</sup>

According to Fangon, on December 10, 2015, at around 9:00 a.m., she was working at the DMMMSU canteen when a man suddenly handed her a brown envelope with the instruction to give it to Palo. She complied and went back to work. Fangon was familiar with Palo because his mother was her co-worker at the canteen.<sup>32</sup>

Around lunch time on the same day, two men in civilian clothes approached her and invited her to go with them at the back of the canteen because they will tell her something. Fangon went with the men because they looked kind. Upon reaching the back of the canteen, the men told Fangon that they needed to go to Palo's house. As they were walking, they saw Palo who was then asked if he knew Fangon to which Palo replied in the affirmative. The men asked Fangon regarding the whereabouts of a brown envelope but she denied knowledge of the same. It was then that Fangon saw five men approaching her. The men then arrested Palo and Fangon for allegedly selling *shabu* worth ₱1,000.00. Fangon vehemently denied it. After her arrest, Fangon told the PAO lawyer her version of the incident and she was advised to submit a counter-affidavit. However, the case she filed against the police officers was dismissed.<sup>33</sup>

On August 25, 2017, Palo filed a motion for leave of court to file demurrer to evidence,<sup>34</sup> with the attached demurrer to evidence<sup>35</sup> praying for the dismissal of the charge against him. Palo argued that the prosecution failed to prove conspiracy between him and Fangon given that he did not participate in the sale between Fangon and SPO2 Panitan. Accordingly, he argued that the evidence obtained from him is inadmissible on the ground that the search

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<sup>28</sup> *Id.* at 30b.

<sup>29</sup> *Id.* at 24.

<sup>30</sup> *Id.* at 30.

<sup>31</sup> TSN, September 26, 2017, pp. 1-18.

<sup>32</sup> Records, pp. 6-7.

<sup>33</sup> *Rollo*, pp. 9-10

<sup>34</sup> Records, pp. 105-106.

<sup>35</sup> *Id.* at 108-115.

by which the evidence was obtained was invalid as his arrest was incipiently illegal.<sup>36</sup>

In a Joint Decision<sup>37</sup> dated November 3, 2017, the court *a quo* acquitted Palo in Criminal Case Nos. 11352 and 11353. However, Fangon was found guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, as amended, in Criminal Case No. 11353.

The RTC found that all the elements of illegal sale of drugs were duly established, as it gave credence to the testimonies of the prosecution witnesses. The RTC also found that the integrity of the seized drugs was shown to have been properly preserved and the chain of custody thereof was unbroken. The dispositive portion of the Joint Decision reads:

**WHEREFORE**, in view of the foregoing, judgment is rendered as follows:

1. In Criminal Case No. 11352, the court hereby **ACQUITS** GENESIS PALO Y BULALA of the crime charged on reasonable doubt. He is therefore ordered released from the custody of the Provincial Jail Warden of La Union immediately unless detailed for some other lawful causes.

2. In Criminal Case No. 11353, the court finds accused JOSEPHINE FANGON Y GAYO **GUILTY** of the crime of violation of Sec. 5, Article II, R.A. 9165 and sentences her to suffer **LIFE IMPRISONMENT** and to pay a fine of ₱500,000. The period of her determination shall be credit in her favor in the service of her sentence. Accused GENESIS PALO is **ACQUITTED** on the ground of reasonable doubt. He is therefore ordered released from the custody of the Provincial Jail Warden of La Union immediately unless detailed for some other lawful causes.

Pursuant to Section 21(7), Republic Act 9165, let the two (2) plastic sachets of shabu subject matter of these cases be turned over to the PDEA for proper disposition.

**SO ORDERED.**<sup>38</sup> (Emphasis in the original)

On November 15, 2017, Fangon filed a motion for reconsideration<sup>39</sup> which the RTC denied in its assailed December 22, 2017 Order.<sup>40</sup>

Aggrieved, Fangon elevated the case to the CA.

<sup>36</sup> *Rollo*, p. 10

<sup>37</sup> *Id.* at 17-23.

<sup>38</sup> *Id.* at 22-23.

<sup>39</sup> Records, pp. 130-142.

<sup>40</sup> *Id.* at 144.

In its March 13, 2020 Decision, the CA affirmed the November 3, 2017 Joint Decision and December 22, 2017 Order of the RTC in its entirety. The CA held that the prosecution was able to prove all the elements of the crime of sale of illegal drugs as punished under Section 5, R.A. No. 9165. The CA also held that the buy-bust team sufficiently complied with the chain of custody rule.

The dispositive portion of the CA Decision reads:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The 3 November 2017 Joint Decision and the 22 December 2017 Order of the Regional Trial Court, San Fernando City, La Union, Branch 29 in Criminal Case No. 11353 is [sic] hereby **AFFIRMED**.

**SO ORDERED.**<sup>41</sup> (Emphasis in the original)

- ✓ Fangon filed a Notice of Appeal<sup>42</sup> in the form of a letter dated June 24, 2020 which was sent through registered mail. In the interest of justice, the CA considered this letter as the Notice of Appeal of Fangon and accordingly elevated the records to this Court.<sup>43</sup>

### *Issue*

Whether the CA correctly affirmed accused-appellant Fangon's conviction for the illegal sale of dangerous drugs.

### *Our Ruling*

The appeal is meritorious.

As discussed by this Court in *People v. Estonilo*,<sup>44</sup> in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. Accordingly, the appellate court may examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

In the prosecution of crimes involving illegal drugs, aside from proof beyond reasonable doubt that the offenses were committed, there must be

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<sup>41</sup> *Rollo*, p. 13.

<sup>42</sup> *CA rollo*, p. 111.

<sup>43</sup> *Id.* at 120.

<sup>44</sup> G.R. No. 248694, October 14, 2020.

proof of the identity and integrity of the *corpus delicti* — the dangerous drug itself.<sup>45</sup> Any doubt in the identity and integrity of the *corpus delicti* warrants the acquittal of the accused.<sup>46</sup> Establishing the identity of the dangerous drug requires an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. It is thus crucial for the prosecution to establish the unbroken chain of custody of the seized item.<sup>47</sup>

In order to do so, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.<sup>48</sup>

This procedure is vital to ensure the preservation of the chain of custody and to guarantee that the integrity of the seized drugs is duly preserved.<sup>49</sup> Strict observance of these procedural safeguards is especially warranted in buy-bust operations in view of the high possibility of abuse in this type of operations.<sup>50</sup>

Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, provides for the statutory requirements to establish an unbroken 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.* – x x x.

- (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 seized 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

<sup>45</sup> *People v. De Asis*, G.R. No. 249992, February 15, 2022; citing *People v. Barte*, 806 Phil. 533, 542 (2017).

<sup>46</sup> *Mallari v. People*, G.R. No. 242302, June 16, 2021, citing *People v. Sultan*, G.R. No. 225210, August 7, 2019, 912 SCRA 446, 449.

<sup>47</sup> *People v. Buniel*, G.R. No. 243796, September 8, 2020.

<sup>48</sup> *People v. Flores*, G.R. No. 246471, June 15, 2020.

<sup>49</sup> *People v. Carpio*, G.R. No. 233200, September 09, 2019, 918 SCRA 238, 249.

<sup>50</sup> *People v. Ramos*, G.R. No. 243792, November 10, 2021.

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[.]**<sup>51</sup>  
(Emphasis supplied)

A careful review of the records reveals that the police officers failed to observe the procedural requirements outlined in R.A. No. 9165, as amended, and left substantial gaps in the chain of custody of the seized drugs.

*First*, the Receipt/Inventory of Property/ies Seized (*Receipt/Inventory*) was not signed by the accused-appellant and Palo nor was there any attempt to explain the absence of their signatures. Accused-appellant and Palo were completely unaware of the inventory that was happening.

In *People v. Quimosing*,<sup>52</sup> one of the factors considered by this Court in ruling for the acquittal of the accused was that the Receipt and Inventory of Property Seized did not contain the signature of the accused or the person(s) from whom such items were confiscated and/or seized as required in Section 21 of R.A. No. 9165. This Court cited *People v. Banding*<sup>53</sup> which held that the failure of the accused to sign the inventory receipt casts doubt that the dangerous drug allegedly seized from the accused was the same drug delivered for documentation. This Court concluded that this lapse tainted the integrity of the drugs seized from accused-appellant.<sup>54</sup>

Similarly, in the case of *People v. Manabat*,<sup>55</sup> the Certificate of Inventory was not signed by accused-appellant or by his counsel or representative. In ruling for the acquittal of the accused-appellant, this Court considered how the prosecution did not acknowledge such defect nor did the prosecution provide any explanation whatsoever as to why accused-appellant was not able to sign the Certificate of Inventory. This is in contrast to *Belmonte v. People*<sup>56</sup> where it was found that while the inventory was not signed by the accused-appellants, the omission was sufficiently explained by the prosecution witnesses who testified that the accused-appellants were given copies but refused to sign.

A review of the cross-examination of DOJ Representative Gapasin shows that not only did the police officers fail to ask accused-appellant and Palo to sign the Receipt/Inventory, it appears accused-appellant and Palo were

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<sup>51</sup> Section 21, R.A. No. 9165. (Emphasis supplied)

<sup>52</sup> G.R. No. 252701, December 2, 2021.

<sup>53</sup> G.R. No. 233470, August 14, 2019, 914 SCRA 197.

<sup>54</sup> *People v. Quimosing*, *supra* note 46.

<sup>55</sup> G.R. No. 242947, July 17, 2019, 909 SCRA 543.

<sup>56</sup> 811 Phil. 944 (2017).



completely unaware of what was happening while the inventory was conducted:

Q: But do you agree with me that in this Certificate of Inventory there were no signatures by either Josephine or Genesis is that correct?

A: Yes ma'am.

x x x

Q: And this PO Panitan did not ask the two accused to affix their signatures, is that correct?

A: Yes ma'am.

Q: And he did not even explain to the accused why the inventory was being conducted in the first place is that correct when you were there, when you were present?

A: No ma'am.

Q: He did not talk with any of the accused or explain to them what was happening, he was just writing the entries, is that correct?

A: He just told me that these were the items taken and these were written in the Inventory ma'am.<sup>57</sup>

*Second*, no photographs of the seized items were taken and submitted into evidence.

While the case records contain photographs submitted as Exhibits "N" to "N-5" for the prosecution, these photographs show the accused-appellant and Palo surrounded by the witnesses, PO1 Cayabyab, and PO1 Panitan, supposedly depicting the conduct of the inventory.<sup>58</sup> This does not comply with Section 21 which clearly requires the photograph(s) of the seized items.

In *People v. Tomawis*,<sup>59</sup> it was emphasized that the law requires photographs of the seized drug itself and not of the accused and the witnesses. While there was a photograph submitted in evidence, this was merely a black and white photocopy of photographs of the accused-appellant and the witnesses at the barangay hall. Similarly, in *People v. Abueva*,<sup>60</sup> this Court found that no photographs of the allegedly seized items were taken and duly presented in court during trial given that the photographs submitted in evidence were not of the seized items, but were of the witnesses signing the inventory, and a mug shot of accused-appellant.

*Third*, there is no showing that sufficient safeguards were in place to preserve the integrity of the seized items while they were in the possession of SPO2 Panitan.

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<sup>57</sup> TSN, October 11, 2016, pp. 11-12.

<sup>58</sup> TSN, August 30, 2016, p. 10.

<sup>59</sup> 830 Phil. 385 (2018).

<sup>60</sup> G.R. No. 248781, October 13, 2021.

Based on the collective testimonies of the prosecution witnesses, the allegedly seized items were in SPO2 Panitan's sole possession from the conduct of the buy-bust operation,<sup>61</sup> until submission of the seized items to the crime laboratory.<sup>62</sup> This includes the waiting time prior to the arrival of the insulating witnesses for the conduct of the inventory, after the conclusion of the buy-bust operation.<sup>63</sup>

After the buy-bust operation, SPO2 Panitan went to Bacnotan District Hospital and Bacnotan Police Station before heading to the crime laboratory to submit the request for dangerous drugs examination.<sup>64</sup> Based on the records,<sup>65</sup> SPO2 Panitan had the seized items in his possession for approximately 2.5 hours. There was no turnover of the seized items to the investigating officer in this case.<sup>66</sup>

The testimonies of the prosecution witnesses failed to demonstrate the manner by which SPO2 Panitan handled the seized items or other measures he undertook to safeguard the seized items. In particular, SPO2 Panitan's testimony merely mentions that the seized items were placed inside a plastic bag, with no information on whether the same was sealed, or if he physically held onto the plastic bag in the whole time until the submission of the seized drugs for examination, to wit:

Q: Mr. Witness, after conducting the markings and inventory of seized items what transpired next?

A: We put it in a plastic then proceeded to the hospital for medical checkup of the subject person.

Q: You put something in a plastic what was that you put in a plastic?

A: The items confiscated during the operation ma'am.

Q: Who held the plastic containing the items confiscated in the course of the operation?

A: I ma'am.

x x x

Q: After you had the accused medically examined at the Bacnotan District Hospital, what happened next?

A: We proceeded in our Police Station.

Q: What did you do at the Police Station?

A: I made the request for the laboratory examination of the confiscated items.

<sup>61</sup> TSN, June 7, 2017, pp. 12-17.

<sup>62</sup> *Id.* at 12-18.

<sup>63</sup> TSN, August 30, 2016, p. 8; TSN, October 11, 2016, p. 8.

<sup>64</sup> TSN, June 7, 2017, pp. 16-18.

<sup>65</sup> Exhibit I; records, p. 35.

<sup>66</sup> PO2 Savier C. Corpuz is described as the "Investigator on Case" in the Police Report (Exhibit K) and request letter for the issuance of Medical Certificates (Exhibit J).

Q: By the way on your way to Bacnotan District Hospital from the DMMMSU NLUC who was holding the plastic containing the confiscated items?

A: I ma'am.

x x x

Q: In submitting this request [for dangerous drug examination] what accompanies this request?

A: The evidences ma'am.<sup>67</sup>

In view of SPO2 Panitan's testimony that the seized items remained in his possession, *People v. Dela Cruz*,<sup>68</sup> as cited in *People v. Abdulah*,<sup>69</sup> is instructive:

**This Court has previously decried police officers' plain claims of having close, personal custody of allegedly seized items in transit. This lone assertion, as pointed out in *People v. Dela Cruz*, is "fraught with dangers, reckless, if not dubious," and "a doubtful and suspicious way of ensuring the integrity of the items":**

x x x

**The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.**

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

**Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. x x x.<sup>70</sup> (Emphasis supplied)**

In *People v. Sultan*,<sup>71</sup> a case with a similar factual background, this Court observed that the apprehending officer having sole custody of the supposedly confiscated items, alone, cannot be taken as a guarantee of the items' integrity and instead, may be prejudicial to the integrity of the items in the absence of safeguards other than his or her mere possession:

<sup>67</sup> TSN, June 7, 2016, pp. 17-18.

<sup>68</sup> *People v. Dela Cruz*, 744 Phil. 816 (2014).

<sup>69</sup> G.R. No. 243941, March 11, 2020.

<sup>70</sup> *Id.*

<sup>71</sup> *Supra* note 40.

Here, the prosecution established that from the place of seizure to the barangay hall, PO2 Hechanova had sole custody of the supposedly confiscated items. **But this alone cannot be taken as a guarantee of the items' integrity. On the contrary, an officer's act of personally and bodily keeping allegedly seized items, without any clear indication of safeguards other than his or her mere possession, has been viewed as prejudicial to the integrity of the items.**

X X X

In *Dela Cruz*, this Court did not approve of the incautious keeping of allegedly seized narcotics even as the prosecution averred separating them in different pockets as a supposed measure to preserve integrity. With greater reason should this Court, in this case, reject PO2 Hechanova's claim. The bare assertion that PO2 Hechanova had possession of the items, without so much as a simulation of safekeeping measures such as the segregation in *Dela Cruz* is a blatant gap in the chain of custody. **The dearth of specific and detailed descriptions of how the allegedly seized items had been preserved while in transit amounts to a broken, unreliable chain of custody. This is fatal to the prosecution's case.**<sup>72</sup> (Emphases supplied).

Here, properly demonstrating the safeguards in place becomes all the more important considering the discrepancy in the testimonies as to the location of SPO2 Panitan while the seized items were in his possession. While SPO2 Panitan claims that he proceeded to the Bacnotan District Hospital after the buy-bust operation, PO3 Peralta testified that PO2 Panitan did not accompany him to the hospital, and instead, proceeded directly to the police station.<sup>73</sup>

Accordingly, SPO2 Panitan's failure to provide specific and detailed descriptions of how the allegedly seized items had been preserved while in transit constitutes a significant breach in the chain of custody.

In addition, the placement of the seized items in a plastic bag without further explanation as to measures undertaken to secure it clearly fails to meet the exacting standards to preserve the chain of custody.

Compliance with the chain of custody requires that "the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody."<sup>74</sup> The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage.<sup>75</sup>

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<sup>72</sup> *Id.* at 464-466.

<sup>73</sup> TSN, May 16, 2017, p. 10.

<sup>74</sup> *People v. Sanchez*, 540 Phil. 214, 242 (2008), citing *People v. Martinez, et al.*, 652 Phil. 347, 377 (2010).

<sup>75</sup> *Ramos v. People*, 826 Phil. 663, 684 (2018).

Evidently, the statement of SPO2 Panitan that the seized items were placed in a plastic that he held on to until he turned it over to the crime laboratory demonstrates a glaring breach in the preservation of the integrity of the seized drugs.

Notably, the presumption of regularity of performance of official duty applies only when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law.<sup>76</sup> The presumption of regularity is disputable, and cannot be regarded as binding truth. Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.<sup>77</sup>

*Lastly*, while the prosecution was able to present Forensic Chemist PSI Sobejana, her testimony was inadequate to demonstrate the management, storage, and preservation of the seized drugs to the degree necessary to reasonably establish the chain of custody.

*People v. Calleja*<sup>78</sup> outlines the subject matter required to be testified on by the forensic chemist who conducted a dangerous drugs examination:

[The fourth link] refers to the turnover and submission of the dangerous drug from the forensic chemist to the court. In drug-related cases, it is of paramount importance that the chemist testifies on the details pertaining to the handling and analysis of the dangerous drug submitted for examination, *i.e.*, when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Equally important, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.<sup>79</sup>

The testimony of PSI Sobejana was confined to identifying the specimens and their markings, the request for dangerous drugs examination, chain of custody form, and laboratory reports. She also testified on from whom she received, and to whom she gave, the drug specimens over the course of the performance of her duties.<sup>80</sup> There is no mention of the condition of the drug specimens when she received these from PO3 Langit, safety and security measures undertaken to preserve the drug specimens, form of chemical analysis used in the examination, and other relevant information.

Significantly, her testimony does not mention the description of the plastic bag where the seized items were placed by SPO2 Panitan. There is also

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<sup>76</sup> *People v. Buniel*, G.R. No. 243796, September 8, 2020.

<sup>77</sup> *Quiap v. People*, G.R. No. 229183, February 17, 2021.

<sup>78</sup> G.R. No. 250865, June 16, 2021.

<sup>79</sup> Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

<sup>80</sup> TSN, April 26, 2016, pp. 1-12.

no way to confirm the condition of the drug specimens upon initial turnover to the crime laboratory given that the taking of PO3 Langit's testimony was dispensed with. Further, while stipulations were entered into in connection with PO3 Langit's testimony, the stipulation on this subject was limited to PO3 Langit receiving "2 plastic sachets with suspected shabu" from SPO2 Panitan and that the same were turned over to PSI Sobejana.<sup>81</sup>

Moreover, while PSI Sobejana testified that she delivered the drug specimens to PO3 Bucasas, the evidence custodian, there is no information available showing how the drugs specimens were handled after the turnover. In *People v. Sobrio*,<sup>82</sup> the Court concluded that this gap in the chain of custody casts serious doubts on the handling of the confiscated *shabu*:

While it was established that after the conduct of the chemical analysis, PSI Villagen sealed the specimens in a brown envelope and delivered the same to PO3 Nartea, the evidence custodian, **no one testified on how the specimen was handled thereafter.** PO3 Nartea did not testify nor was there any testimony or stipulation that could establish the condition in which the specimens were received and how they were handled by PO3 Nartea to ensure their integrity and evidentiary value. **This gap in the chain of custody casts serious doubts on the handling of the confiscated shabu as it is not clear whether these were the same items allegedly seized from appellant, and later presented in court.**<sup>83</sup>

While this Court has held in earlier cases that the deviation from the standard procedure in Section 21 will not *ipso facto* render the seizure and custody over the items as void and invalid, the prosecution must satisfactorily prove that: (1) there is justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved. The prosecution must explain the reasons behind the procedural lapses and must show that the integrity and evidentiary value of the seized evidence had been preserved.<sup>84</sup> Here, the prosecution manifestly failed to do so. Accordingly, the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule.<sup>85</sup>

This Court reiterates its position on the strict implementation of the law on the prosecution of dangerous drugs cases, as elucidated in *People v. Garcia*:<sup>86</sup>

**x x x the Court heavily enjoins the law enforcement agencies, the prosecutorial service, as well as the lower courts, to strictly and**

<sup>81</sup> TSN, February 10, 2017, p. 3.

<sup>82</sup> G.R. No. 250144, July 28, 2021.

<sup>83</sup> *Id.* (Emphasis supplied)

<sup>84</sup> *Supra* note 44.

<sup>85</sup> *People v. Caray*, G.R. No. 245391, September 11, 2019, 919 SCRA 389, 400.

<sup>86</sup> G.R. No. 215344, June 10, 2019, 903 SCRA 339.

**uncompromisingly observe and consider the mandatory requirements of the law on the prosecution of dangerous drugs cases.**

The Court believes that the evil of illegal drugs must be curtailed with decisiveness and resolve. Nonetheless, the sacred and indelible right to due process enshrined under our Constitution, fortified under statutory law, should never be sacrificed for the sake of convenience and expediency. Otherwise, the malevolent mantle of the rule of men dislodges the rule of law. In any law-abiding democracy, this cannot and should not be allowed.<sup>87</sup>

All told, the presence of substantial gaps in the chain of custody results in the prosecution failing to establish the guilt of accused-appellant with moral certainty. Thus, the acquittal of accused-appellant is merited.

**FOR THESE REASONS**, the Appeal is **GRANTED**. The Decision dated March 13, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 10510, which affirmed the Joint Decision dated November 3, 2017 and the Order dated December 22, 2017 of the Regional Trial Court of San Fernando City, La Union, Branch 29, is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Josephine Fangon y Gayo is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is ordered **RELEASED** from confinement unless she is being held for some other legal grounds.

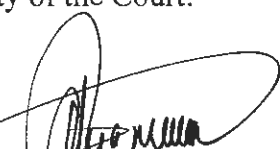
Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institution for Women for immediate implementation. The Superintendent is **DIRECTED** to **REPORT** the action she has taken to this Court within five (5) days from receipt of this Resolution. For their information, copies shall also be furnished to the Chief of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court, Branch 29, of San Fernando City, La Union is directed to turn over the seized sachets of *shabu* to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgment be issued immediately.

**SO ORDERED.**" (Kho, Jr., J., on leave)

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court  
20 FEB 2023 2/17

<sup>87</sup> *Id.* at 374. (Emphasis supplied)

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SUPERINTENDENT (x)  
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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 29  
San Fernando City, La Union  
(Crim. Case No. 11353)

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