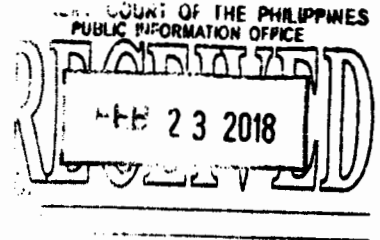




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 215713

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 MARTIRES,* and
 TIJAM, JJ.

BOBBY S. ABELARDE,
Accused-Appellant.

Promulgated:
JAN 22 2018

X-----X

DECISION

DEL CASTILLO, J.:

“Law enforcers should not trifle with the legal requirement [set forth in Section 21 of Republic Act (RA) No. 9165] to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.”¹

Factual Antecedents:

On April 4, 2005, the Office of the City Prosecutor of Cebu City charged the accused-appellant Bobby S. Abelarde a.k.a. Roberto S. Abelarde, with violation of Section 5, Article II of RA 9165, under an Information which alleged –

That on or about the 24th day of March, 2005, at about 5:15 o’clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of the law, did then and there sell, deliver or give away to poseur buyer one (1) heat sealed transparent plastic packet of white crystalline substance weighing 0.03 gram, locally known as shabu, containing methylamphetamine hydrochloride, a dangerous drug.

* Per September 6, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.
¹ *People v. Holgado*, 741 Phil. 78, 81 (2014).

CONTRARY TO LAW.²

This case was docketed as Criminal Case No. CBU-72995 of the Regional Trial Court (RTC) of Cebu City.

The next day, April 5, 2005, the Office of the City Prosecutor of Cebu City filed another Information against the same accused-appellant, this time for violation of Section 11, Article II of RA 9165. The Information this time read as follows –


That on or about the 24th day of March, 2005, at about 5:15 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control six (6) heat sealed transparent [plastic packets] of white crystalline substance weighing 0.24 gram, locally known as shabu, containing methylamphetamine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.³

This second case was docketed as Criminal Case No. CBU-72996 of the RTC of Cebu City.

Arraigned on these two cases, the accused-appellant, assisted by a lawyer from the Public Attorney's Office, entered a negative plea to both indictments.⁴

During the pre-trial conference, the accused-appellant admitted the following:

- 1) The qualification of the Forensic Chemist, Police Chief Inspector Mutchit G. Salinas (PCI Salinas), of the Cebu Philippine National Police (PNP) Crime Laboratory;
 - 2) The existence of the Chemistry Report, marked as Exhibit "A" in Criminal Case No. CBU-72995;
 - 3) The existence of the same Chemistry Report also marked as Exhibit "A" in Criminal Case No. CBU-72996;
 - 4) The existence of the buy-bust money;
- 

² Records, p. 1.

³ Id. at 10.

⁴ Id. at 20.

- 5) The existence of the Joint Affidavit of SPO1 Elmer Villanueva Abelgas (SPO1 Abelgas), SPO1 Willard Cayang Selibio (SPO1 Selibio); PO2 Rene Genobatin Labiaga (PO2 Labiaga), PO1 Aldwin Nacorda Vicada (PO1 Vicada), all members of the Miscellaneous Team of the PNP, Cebu City. This joint affidavit was marked as Exhibit "B" in Criminal Case No. CBU-72995 and marked as Exhibit "C" in Criminal Case No. CBU-72996.
- 6) The identity of the accused-appellant; and
- 7) The fact that the accused-appellant was arrested on the afternoon of March 24, 2005 at Sitio Suba, Pasil, Cebu City, although the accused-appellant is challenging the legality of his arrest.⁵

Version of the Prosecution:

The Government presented only one witness to prove its case: SPO1 Selebio, a member of the so-called "Miscellaneous Team" of the Cebu City PNP which arrested the accused-appellant that afternoon of March 24, 2005 somewhere in Suba, Pasil, Cebu City. The testimony of PCI Salinas, forensic chemist of the Cebu PNP Crime Laboratory was dispensed with, for the reason that the defense admitted the existence of the letter request for chemical examination of the prohibited substance *shabu* involved in these cases, as well as the existence of the chemistry report embodying the result of the chemical examination thereof.⁶

SPO1 Selibio testified⁷ that on the afternoon of March 24, 2005, he received a call from a concerned citizen that a certain person was engaged in the trading of illegal drugs, somewhere in Garfield, interior portion of Suba, Pasil in Cebu City; that upon receipt of the call, he and his fellow police officers, all members of the Miscellaneous Team of the Cebu City PNP, held a "briefing" together with the confidential informant for the purpose of conducting a "buy-bust" operation. Apart from himself, the other members of this "buy-bust" team were SPO1 Abelgas, PO2 Labiaga, PO1 Vicada and a civilian poseur-buyer. After they reached Garfield Street, *Sitio Suba, Barangay Pasil*, Cebu City, their civilian poseur-buyer approached the accused-appellant and struck up a conversation with the latter. From a distance, SPO1 Selibio saw their poseur-buyer give to the accused-appellant the pre-marked ₱100.00 (with Serial Number XC704764), in exchange for something. At this point, the poseur-buyer scratched his head, the pre-arranged signal that the transaction had been consummated, so he and the members of his team rushed toward the accused-appellant and arrested him. He and his teammates frisked the accused-appellant and were able to recover

⁵ Id. at 25-26.

⁶ See TSN, November 17, 2005, pp. 1-4 & November 24, 2005, pp. 2-6.

⁷ See TSN, August 31, 2005 & May 3, 2006.

from him a packet of *shabu*. Further search of the accused-appellant's body yielded yet another six packets of the banned substance *shabu*.

The packets of *shabu* were then marked and later sent to the PNP Crime Laboratory at Camp Sotero Cabahug in Cebu City for chemical examination. The chemical analysis disclosed that the specimens were positive for the presence of methamphetamine hydrochloride, a dangerous drug, locally known as *shabu*.

Version of the Defense:

The accused-appellant categorically denied that he ever sold *shabu* to anyone that afternoon of March 24, 2005 in Pasil, Cebu City, or that he was in possession of *shabu* at the said place and time. He claimed that he was simply "framed-up" by the police officers, and that the alleged packets of *shabu* allegedly taken from him were "planted" evidence.⁸

The accused-appellant, who earns his living as a tricycle driver, testified that on the afternoon in question, he went to the house of one "Nanay," his neighbor at Magsaysay Street, Cebu City, to buy water for bathing and washing; that as no water was yet coming out of "Nanay's" faucet, he passed the time watching TV at the gate of the house of another neighbor, a certain "Mommy," whose house was just opposite, or across from, the house of "Nanay," that in Nanay's house he in fact saw some acquaintance like Lily and her companions who were playing cards; that while waiting for his pail to be filled with water, police officers appeared in the scene, and after one "balding" police officer had pointed to him, another police officer whom he identified in court as "Sir Willard," at once frisked him; that he resisted the frisking, but this Sir Willard told him to shut up, and to stop being "stubborn" and "just go with them;"⁹ that because he insisted that he did not know what wrongdoing he had done, and because the police officers did not care to reply to his query as to what crime he had committed, he put up a stronger resistance to their frisking of his body; that in fact the frisking of his body by the policemen yielded nothing at all; that apparently incensed at his resistance, the police officers forcibly brought him to the Tabo-an Police Station, in Cebu City; that while there, the police officers asked him "who are the drug lords in our place;"¹⁰ and that when he replied that "I do not know about that;"¹¹ the police officers became more infuriated and told him that they would "[add] Section 5 to my case;"¹² and that because he exhibited a persistently defiant attitude, he was brought by the police to another police station, where he was mauled by a police officer, whose name he could not now recall.

⁸ See TSN, July 3, 2007.

⁹ Id. at 7.

¹⁰ Id. at 9.

¹¹ Id.

¹² Id. at 10.

Marilyn Torrecampo, the accused-appellant's neighbor in Magsaysay Street, *Sitio Suba, Barangay Pasil, Cebu City* testified¹³ that on the afternoon in question she was in her house playing cards, when the accused-appellant passed by and she invited him to attend the "visita iglesia;" that without replying to her invitation in a clear-cut manner, the accused-appellant went on his way, and the next thing she saw was that the accused-appellant was fetching water, and she later saw him watching television at the opposite end of the street alley where they lived; that after a little while, she suddenly noticed the presence of police officers in that place, and when the police officers got to their alley, one of the police officers pointed to the accused-appellant as the "one selling *shabu*,"¹⁴ and the other police officers at once "handcuffed and arrested"¹⁵ the accused-appellant; that the police officers also frisked the accused-appellant "but we never saw that something was taken from him;"¹⁶ that while being frisked, the accused-appellant put up a strong resistance, but the police officers forcibly brought him with them; that at this point the accused-appellant "shouted to call his mother,"¹⁷ and she herself also called another person "to call Bobby's mother to inform the mother of Bobby that Bobby was arrested;"¹⁸ and that she remembered that the people around them even asked the policemen, "what are you doing with Bobby?"¹⁹ that "he is being treated like a pig x x x considering that [when] Bobby rolled to the ground, they bodily carried Bobby."²⁰

Ruling of the Regional Trial Court:

Given these facts, the RTC of Cebu City, Branch 13,²¹ held:

The prosecution proved all the elements of the crime of Sale under Sec. 5, Art. II, RA 9165. Thus, the identity of the seller as well as their buyer were clearly proven. There was an exchange of *shabu* weighing 0.03 gram for ₱100.00. The *shabu* was identified, marked, presented, and admitted in evidence.

All the elements of possession of the dangerous drugs are likewise present. Thus, after a search incident to a lawful arrest, the police officers found six (6) packets of *shabu* weighing 0.24 gram in the personal possession of the accused. There is a clear intent to possess them because they were found in his possession. The six (6) plastic packets of *shabu* were identified, marked, presented and admitted in evidence.

This court is not inspired by the self-serving, general denial interposed by the accused. He did not know any of the police officers who arrested him.

¹³ See TSN, August 10, 2006.

¹⁴ *Id.* at 6.

¹⁵ *Id.*

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ Presided over by the Honorable Meinrado P. Paredes.



There is no evidence that the poseur-buyer had an ax to grind against him. The police officers had no ill-motive to plant evidence against the accused. There is a presumption that the arrest and search of the accused were done in the performance of their public functions. His other witness, Narile Torrecampo who is a close friend of his wife also testified in plain denial of the testimony of prosecution witness Selebio. It must be remembered that when the accused testified, he did not mention Narile Torrecampo.²²

The RTC thereafter disposed as follows –

WHEREFORE, judgment is hereby rendered finding ACCUSED BOBBY S. ABELARDE also known as Roberto S. Abelarde GUILTY in CBU-72995, for violation of Sec. 5, Art. II, RA 9165 and sentences him to LIFE IMPRISONMENT and fine in the amount of ₱500,000.00 and in CBU-72996, he is likewise found GUILTY of violating Sec. 11, Art. II, RA 9165, and sentences him to TWELVE (12) YEARS AND ONE (1) DAY TO FOURTEEN (14) YEARS of imprisonment, plus fine in the amount of ₱300,000.00.

The seven (7) packs of shabu are hereby ordered, CONFISCATED, in favor of the government and DESTROYED pursuant to the [p]rovisions of RA 9165.

With costs against the accused in both cases.

SO ORDERED.²³

Ruling of the Court of Appeals

From this judgment, accused-appellant appealed to the Court of Appeals (CA), where his appeal was docketed as CA-G.R. CEB-CR HC No. 01072. The accused-appellant's appeal was predicated on a single assignment of error: that the State failed to prove his guilt beyond reasonable doubt. After review, the appellate court rejected the appeal, but made a slight modification in the penalty meted out in Criminal Case No. CBU-72996, thus –

All told, the Court finds nothing in the records that would justify a deviation from the findings of the trial court that the guilt of the accused for the illegal sale and possession of illegal drugs have been proven beyond reasonable doubt.

Under Section 5 of Republic Act No. 9165, the unauthorized sale of shabu, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Hence, the penalty of life imprisonment and fine in the amount of ₱500,000.00 imposed by the trial court in CBU-72995 for violation of Section 5, Art. II, RA 9165 is proper.

²² Records, pp. 78-79.

²³ Id. at 79.

Section 11(3) of Republic Act No. 9165 provides that the illegal possession of less than five grams of shabu is penalized with imprisonment of 12 years and one day to 20 years, and a fine ranging from ₱300,000.00 to ₱400,000.00.

Sec. 1 of the Indeterminate Sentence Law mandates that, in case of a special law, the accused shall be sentenced 'to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.'

The fine imposed by the trial court in CBU-72996 for violation of Section 11, Article II, R.A. 9165 in the amount of ₱300,000.00 is proper. As regards the penalty [of] imprisonment, the Honorable Supreme Court in *People v. Resurreccion* held that applying the ISL, the penalty of imprisonment from twelve (12) years and one (1) day, as minimum to fourteen (14) years and eight (8) months, as maximum, for the illegal possession of shabu with a total weight of 0.24 gram is in order.

WHEREFORE, the Decision of the Regional Trial Court, Branch 13, Cebu City dated July 4, 2007, is hereby AFFIRMED with the MODIFICATION that in CBU-72996 for violation of Section 11, Article II, R.A. 9165, the accused-appellant Bobby S. Abelarde is sentenced to the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.

SO ORDERED.²⁴

Hence, the present recourse.

Our Ruling

There is merit in the present appeal.

The single insurmountable obstacle upon which the prosecution's case here must flounder and fail is its utter and total failure to observe the mandatory directives embodied in Section 21, paragraph 1, Article II of RA 9165 and Section 21(a), Article II of RA 9165.

Almost on all fours to the present Petition is *People v. Denoman*,²⁵ where this Court speaking through Justice Arturo D. Brion, said:

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the

²⁴ CA rollo, pp. 107-108.

²⁵ 612 Phil. 1165 (2009).



identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

Section 21, paragraph 1, Article II of RA No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA No. 9165 give us the procedures that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case. Parenthetically, in *People v. De La Cruz*, we justified the need for strict compliance with the prescribed procedures to be consistent with the principle that penal laws shall be construed strictly against the government and liberally in favor of the accused.

Section 21, paragraph 1, Article II of RA No. 9165, states:

- 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 (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. [Emphasis supplied]

This provision is further elaborated in Section 21(a), Article II of the IRR of RA No. 9165, which reads:

- (a) The apprehending office/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 (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further 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. [Emphasis supplied]

In the present case, the records show that the buy-bust team did not observe even the most basic requirements of the prescribed procedures. While the markings, 'AOC-BB/17-02-03,' were made in the small plastic sachet allegedly seized from the accused-appellant, the evidence does not show the identity of the person who made these markings and the time and place where these markings were made. Notably, PO1 Carlos' testimony failed to disclose whether a physical inventory and photograph of the illegal drug had been done.



Further, nothing in the records also indicates whether the physical inventory and photograph, if done at all, were in the presence of the accused-appellant or his representatives or within the presence of any representative from the media, DOJ or any elected official. Then again, PO1 Carlos' testimony also failed to show that any of these people has been required to sign the copies of the physical inventory, or that any of them was subsequently given a copy of the physical inventory.

We had occasions to discuss and expound in several cases on the implications of the failure to comply with Section 21, paragraph 1, Article II of RA No. 9165.

In *People v. Sanchez*, we declared that in a warrantless seizure (such as in a buy-bust operation) under RA No. 9165, the physical inventory and photograph of the items can be made by the buy-bust team, *if practicable*, at the place of seizure considering that such interpretation is more in keeping with the law's intent of preserving the integrity and evidentiary value of the seized drugs.

People v. Garcia resulted in an acquittal because the buy-bust team failed to immediately mark the seized items at the place of seizure and failed to explain the discrepancies in the markings in the seized items. The underlying reason for the acquittal, of course, was the doubts raised on whether the seized items are the exact same items that were taken from the accused-appellant when he was arrested; the prosecution failed to satisfactorily establish the *corpus delicti* – a material element of the crime.

Another acquittal was *People v. Robles*, where the Court considered the uncertainty of the origins of the seized drug given the lack of evidence showing compliance with the prescribed procedures on physical inventory, the photographing of the seized articles, and the observance of the chain of custody rule.

While the chain of custody has been a critical issue leading to acquittals in drug cases, we have nevertheless held that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow. The last paragraph of Section 21(a), Article II of the IRR of RA No. 9165 provides a saving mechanism to ensure that not every case of non-compliance will irretrievably prejudice the prosecution's case. To warrant application of this saving mechanism, however, the prosecution must recognize and explain the lapse or lapses in the prescribed procedures. The prosecution must likewise demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.

In the present case, the prosecution miserably failed to adduce evidence establishing the chain of custody of the seized illegal drugs, and failed as well to establish compliance with the saving mechanism discussed above.

In *Lopez v. People*, we laid down the requirements that must be followed in handling an illegal drug seized:

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.

Section 1(b) of Dangerous Drugs Board Resolution No. 1, Series of 2002, which implements RA No. 9165, defines chain of custody in this wise:

b. '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 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;

While the identities of the seller and the buyer and the transaction involving the sale of the illegal drug were duly proven in this case by PO1 Carlos' testimony, we find the testimony deficient for its failure to establish the various links in the chain of custody. PO1 Carlos' did not state the details material to the handling of the items seized from the accused-appellant. This glaring deficiency is readily obvious from PO1 Carlos's short testimony which glossed over the required details. To quote PO1 Carlos:

Q: After you purchased, what happened next?
A: We arrested them.

x x x

x x x

x x x

Q: After that?
A: We apprised him of his rights and his violation then we brought him to the Pagamutang Bayan.

Q: What was the result of the laboratory examination?
A: Positive, sir.

Thus, PO1 Carlos failed to testify about the following critical link in the chain of custody –

(a) The first link

The links in the chain of custody start with the seizure of the plastic sachet containing the suspected *shabu* bought in the buy-bust sale. The short testimony of PO1 Carlos in this regard merely showed that after making the arrest, the accused-appellant was taken to the *Pagamutang Bayan* and thereafter to the police station. His testimony was glaringly silent regarding the handling and disposition of the seized plastic sachet and its contents after the arrest. He did

not also identify the person who had care of the seized plastic sachet during the ride to the *Pagamutang Bayan*, and from there to the police station.

(b) The second link

The second link in the chain of custody – the turnover of the seized plastic sachet containing the *shabu* from the buy-bust team to the police investigator – was not supported by evidence. As we mentioned earlier, while markings were made on the seized plastic sachet recovered from the accused-appellant, the prosecution failed to adduce any evidence identifying the person who made the markings and the place and occasion when these markings were made. Similarly, the prosecution also failed to present evidence pertaining to the identity of the person who submitted the seized plastic sachet to the police investigator. Although the records show that the request for laboratory examination of the seized plastic sachet was prepared by one Monchito Glory Lusterio as Chief Police Inspector of the DEU, the evidence does not show that the Chief Police Inspector was the police investigator who received the marked plastic sachet from the buy-bust team.

A close examination of the records likewise shows that the buy-bust sale occurred on February 17, 2003 while the request for laboratory examination was prepared a day after or on February 18, 2003. The evidence does not show who had temporary custody of the seized items during this intervening period of time and before it was taken to the Philippine National Police (*PNP*) Crime Laboratory for examination.

(c) The third link

Evidence showing the custody of the seized plastic sachets at the *PNP* Crime Laboratory stage has not been adduced. Notably, the identity of the person who took the seized *shabu* to the crime-laboratory and the identity of the person who received the seized *shabu* for laboratory examination were not disclosed. The records show that one Albert S. Arturo, as Chief Forensic Chemist, examined the specimens submitted in the request dated February 18, 2003; it does not appear however that he was the person who received the specimens when they were turned over by the Malabon City police. At most, the evidence on hand only identified him as the one who actually examined the specimens submitted by the Malabon City police.

(d) The fourth link

Sections 3 and 6 (paragraph 8) of Dangerous Drugs Board Regulation No. 2. Series of 2003, [require] laboratory personnel to document the chain of custody each time a specimen is handled or transferred until its disposal; the board regulation also requires identification of the individuals in this part of the chain. The records of the case are bereft of details showing that this board regulation was ever complied with; the records also do not indicate how the specimen was handled after the laboratory examination and the identity of the person who had the custody of the *shabu* before its presentation in court.

The above enumeration and discussion show the glaring gaps in the chain of custody -- from the seizure of the plastic sachet until the *shabu* was



presented in court – and the prosecution’s failure to establish the identities of the persons who handled the seized items.²⁶

Turning to the cases under review: We find that the members of the Miscellaneous Team of the Cebu City PNP which allegedly conducted the “buy-bust” operation that afternoon of March 24, 2005 miserably failed to establish the four critical linkages aforementioned, because specifically, with reference to the critical links in the chain of custody, we find in these two cases that –

(a) The **first link** started with the seizure of the seven packets of *shabu* subject of the buy-bust operation and alleged illegal possession. Here, the very frugal and abbreviated testimony of SPO1 Selibio was glaringly silent as regards the handling and disposition of the seven packets of alleged *shabu* and their contents after the accused-appellant’s arrest that afternoon of March 24, 2005. Neither did SPO1 Selibio make any effort to identify the person who had care or custody of these alleged seven packets of *shabu* from the time these were allegedly confiscated from the accused-appellant at Suba, Pasil, Cebu City to the time these were delivered to PCI Salinas at Cebu PNP Crime Laboratory, Camp Sotero Cabahug, Cebu City.

(b) The **second link**, consisting in the turnover of the seized seven packets of *shabu* from the buy-bust team to the police investigator was not supported by any evidence. In fact SPO1 Selibio gave no testimony at all in regard to the turnover of the allegedly seized seven packets of *shabu* from the buy-bust team to the police investigator (whoever he/she was). And while there were some markings on the allegedly seized seven packets of *shabu*, SPO1 Selibio did not identify the person who made the markings and the place and the occasion when these markings were made. Moreover, SPO1 Selibio did not identify the person (whoever this person was) who submitted the seven packets of alleged *shabu* to the police investigator (whoever this police investigator was).

(c) The **third link** requires evidence respecting the custody of the seized seven packets of *shabu* at the said PNP Crime Laboratory at Camp Sotero Cabahug, Cebu City.

Once again, no testimony of any kind was given by SPO1 Selibio relative to the custody of the seven packets of the alleged *shabu* at the PNP Crime Laboratory at Camp Sotero Cabahug, Cebu City. More to the point, SPO1 Selibio did not identify the person who brought the seven packets of alleged *shabu* to the PNP Crime Laboratory at Camp Sotero Cabahug in Cebu City; nor did he testify that it was PCI Salinas, resident forensic chemist, who herself took delivery or custody of the seven packets of *shabu*, when those were brought to the PNP Crime Laboratory at Camp Sotero Cabahug in Cebu City.


²⁶ Id. at 1175-1182.

(d) The *fourth link* is connected to Sections 3 and 6, paragraph 8 of the Dangerous Drugs Board Regulation No. 2, Series of 2004, which make it obligatory for laboratory personnel to document the chain of custody each time a specimen is handled or transferred, until its disposal; the board regulation also requires identification of the individuals in this part of the chain. Here, no evidence of any kind has been adduced to attest to the fact that this Board Regulation No. 2 has ever been complied with; neither was there any evidence to indicate how the seven packets of *shabu* were handled after the laboratory examination (assuming that indeed there was such a laboratory examination) and the identity of the person who had custody of these seven packets of *shabu* before their presentation in court.

As in the *Denoman* case, we cannot close our eyes to the fact that in the cases under review SPO1 Selibio went through the motion of identifying in court the packets of *shabu* that were allegedly recovered from the accused-appellant that afternoon of March 24, 2005 somewhere in *Barangay Pasil*, Cebu City. But the lapses in procedure heretofore set forth are just too egregious and too glaring to be shunted aside; hence such lapses must cast serious lingering doubts upon the prosecution's claim that the packets of alleged *shabu* that were "offered" as evidence in court were the self-same packets of *shabu* that were seized from the herein accused-appellant that afternoon in question somewhere in *Barangay Pasil*, Cebu City. Indeed, because of these yawning gaps in the prosecution's evidence, we are not prepared to say that the body of the crime – the *corpus delicti* – has been convincingly identified in these twin cases. And, as stressed in the *Denoman* case, the failure to establish the existence of the *corpus delicti* must inevitably result in the acquittal of the accused-appellant. For, it is axiomatic that in **all** criminal prosecutions, **all** the elements constitutive of the crime charged must be duly established. Otherwise, it becomes the constitutional duty of the Court to acquit the accused-appellant his guilt not having been proved beyond reasonable doubt. And this is the situation here.

WHEREFORE, the appeal is **GRANTED**. We hereby **REVERSE and SET ASIDE** the November 29, 2013 Decision of the Court of Appeals in CA-G.R. CEB-CR. HC No. 01072. The accused-appellant Bobby S. Abelarde is hereby **ACQUITTED** of the charges against him in Criminal Case Nos. CBU-72995 and CBU-72996 of the Regional Trial Court of Cebu City, Branch 13. He is immediately ordered released from detention unless he is detained due to some other lawful cause or causes.


Send a copy of this Decision to the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is commanded to report to this Court the action he has taken relative to this directive within five days from receipt hereof.



SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

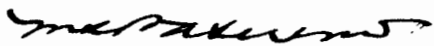

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On leave)
SAMUEL R. MARTIRES
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice