Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

LARRY MENDOZA *y* ESTRADA,
Accused-Appellant.

G.R. No. 192432

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

JUN 23 2014

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DECISION

BERSAMIN, *J.*:

The law enforcement agents who conduct buy-bust operations against persons suspected of drug trafficking in violation of Republic Act No. 9165 (RA No. 9165), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, should comply with the statutory requirements for preserving the chain of custody of the seized evidence. Failing this, they are required to render sufficient reasons for their non-compliance during the trial; otherwise, the presumption that they have regularly performed their official duties cannot obtain, and the persons they charge should be acquitted on the ground of reasonable doubt.

The Case

This appeal seeks the review and reversal of the decision promulgated on April 26, 2010 in CA-G.R. CR-H.C. No. 03901 entitled *People of the Philippines v. Larry Mendoza y Estrada*,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on February 24, 2009 by the Regional Trial Court (RTC), Branch 67, in Binangonan, Rizal finding accused Larry

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Vicente S.E. Veloso, with Associate Justice Francisco P. Acosta and Associate Justice Danton Q. Bueser concurring.

Mendoza *y* Estrada guilty of a violation of Section 5 and a violation of Section 11, Article II of RA No. 9165.[2]

Antecedents

The accusatory portion of the information charging the violation of Section 5 of RA No. 9165 reads:

> That on or about the 28th day of August 2007, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur buyer (PO1 Arnel D. Diocena), 0.03 gram and 0.01 gram or a total weight of 0.04 gram of white crystalline substance contained in two (2) heat-sealed transparent plastic sachets, which substance was found positive to the test for Methylamphetamine hydrochloride also known as "shabu", a dangerous drug, in consideration of the amount of Php 500.00, in violation of the above-cited law.
>
> CONTRARY TO LAW.[3]

The accusatory portion of the information charging the violation of Section 11 of RA No. 9165 alleges:

> That, on or about the 28th day of August 2007, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did, then and there willfully, unlawfully and knowingly possess and have in his custody and control 0.01 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which substance was found positive to the test for Methylamphetamine hydrochloride also known as "shabu", a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.[4]

After the accused pleaded *not guilty* to both informations,[5] the State presented Sr. Insp. Vivian C. Sumobay, PO1 Arnel D. Diocena and Insp. Alfredo DG Lim as its witnesses, while the witnesses for the Defense were the accused himself, Lolita Flores and Analiza Acapin.

The CA summarized the respective versions of the parties in the decision under review as follows:

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2 CA *Rollo*, pp. 14-16.
3 Original Records, Criminal Case No. 07-496, p. 1.
4 Original Records, Criminal Case No. 07-497, p. 1.
5 Supra note 3, at 29.

Evidence for the Prosecution

As culled from the herein assailed Decision, the prosecution presented the following witnesses:

"x x x **Policemen Arnel Diocena** and **Alfredo DG Lim** testified that, on September 29, 2007, they received reports that an alias 'Larry' was selling *shabu* at St. Claire Street, Barangay Calumpang, Binangonan, Rizal. They organized a **buy-bust operation** where Diocena acted as the poseur buyer while Lim served as back-up. They proceeded to the target area with their asset at around 10:45 p.m. There Diocena and the asset waited in the corner on their motorcycle while Lim and the other cops positioned themselves in the perimeter. The asset texted Larry and they waited for him to arrive. Later, Larry arrived and told them, '*Pasensya na at ngayon lang dumating ang mga items.*' Larry then asked them how much they were buying and Diocena told ₱500.00 worth. Larry took out *two plastic sachets of shabu* and gave it to Diocena who gave him a **marked ₱500 bill (exhibit 'D'). Diocena** lit the left signal light of his motorcycle to signal Lim and the other cops that the deal was done. They then arrested Larry who turned out to be the accused. **After frisking him, they recovered another sachet of *shabu* from him**. Diocena marked the first two **'LEM-1'** and **'LEM-2'** while the one taken after the frisk he marked **'LEM-3'** (TSN dated April 23 and July 17, 2008, exhibits 'D', 'E' and 'F'). These were sent to the police crime lab for forensic testing where they tested positive for 0.03 ('LEM-1'), 0.01 ('LEM-2') and 0.01 ('LEM-3') grams for **Methylamphetamine Hydrochloride or *shabu*** respectively (TSN dated December 5, 2007, exhibits 'A', 'B' and 'C'). 'LEM-1' and 'LEM-2' were made the basis of the pushing charge while 'LEM-3' the one for possession."

Evidence for the Defense

The defense witnesses' version of facts, as summarized in the herein assailed Decision, is as follows:

"x x x On that day, he was minding his own business, eating with his wife when his friend Rolly Lopez knocked on the door. **Rolly was wanted by the cops ('*may atraso*') and asked Mendoza for help to get them off his back.** Rolly texted somebody and after there was another knock. It was the police led by one **Dennis Gorospe** who asked Mendoza for his identity. When he said yes, Gorospe cuffed him after showing him sachets of *shabu* with his initials. Gorospe was then taken to the police station where he was interrogated and asked how much **protection money** he can cough up. When he refused, he was arrested and drug tested. He claims that he was supposed to be a *regalo* to the new police chief. (TSN dated August 27, October 9, November 26, 2008 and February 18, 2009)[6]

Ruling of the RTC

On February 24, 2009, the RTC convicted the accused of the crimes charged,[7] disposing:

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6 *Rollo*, pp. 4-6.

7 Supra note 2

> We thus find accused Larry Mendoza **GUILTY** beyond reasonable doubt of violating Section 5 of R.A. No. 9165 and sentence him to suffer a penalty of life imprisonment and to pay a fine of ₱500,000.00. We also find him **GUILTY** beyond reasonable doubt of violating Section 11 of R.A. No. 9165 and illegally possessing a total of 0.01 grams of Methylamphetamine Hydrochloride or *shabu* and accordingly sentence him to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of ₱300,000.00
>
> Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.
>
> SO ORDERED.[8]

Judgment of the CA

The accused appealed, contending that the identity of the *corpus delicti* and the fact of illegal sale had not been established beyond reasonable doubt; that PO1 Diocena's testimony on the sale of the illegal drugs and on the buy-bust operation had not been corroborated; that the Prosecution had patently failed to show compliance with the requirements of Section 21 of RA No. 9165; and that such failure to show compliance had negated the presumption of regularity accorded to the apprehending police officers, and should warrant his acquittal.[9]

On April 26, 2010, the CA affirmed the conviction of the accused,[10] holding and ruling thusly:

> x x x [I]t is worthy of mention that prosecution of cases for violation of the Dangerous Drugs Act arising from buy-bust operations largely depend on the credibility of the police officers who conducted them. Unless clear and convincing evidence is proffered showing that the members of the buy-bust team were driven by any improper motive or were not properly performing their duty, **their testimonies on the operation deserve full faith and credit.**
>
> Here, accused-appellant failed to present any plausible reason or ill-motive on the part of the police officers to falsely impute to him such a serious and unfounded charge. We thus are obliged to accord great respect to and treat with finality the findings of the trial court on the prosecution witnesses' credibility. After all, it is settled doctrine that the trial court's evaluation of the credibility of a testimony is accorded the highest respect, for the trial court has the distinct opportunity of directly observing the demeanor of a witness and, thus, to determine whether he is telling the truth.
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> Accused-appellant's argument that the procedural requirements of Section 21, paragraph 1 of Article II of Republic Act No. 9165 with

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8 Id. at 16.
9 *Rollo*, pp. 8-9.
10 Supra note 1.

respect to the custody and disposition of confiscated drugs were not complied with is equally bereft of merit.

x x x x

Verily, failure of the police officers to strictly comply with the subject procedure is not fatal [to] **the integrity and the evidentiary value of the confiscated/seized items having been properly preserved** by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or items seized/confiscated from him inadmissible. For, what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

x x x x

It thus behooves Us to believe that **all the links in the chain** – from the moment it was seized from the accused-appellant, marked in evidence and submitted to the crime laboratory, up to the time it was offered in evidence – **were sufficiently established** in this case.

We are thus constrained to uphold accused-appellant's conviction.

x x x x

WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision dated February 24, 2009 is **AFFIRMED**.

SO ORDERED.[11]

Issue

In this appeal, the accused presents the lone issue of whether the CA erred in finding him guilty beyond reasonable doubt of the violations of Section 5 and Section 11 of RA No. 9165.

Ruling of the Court

The appeal is meritorious.

1.
The State did not satisfactorily explain substantial lapses committed by the buy-bust team in the chain of custody; hence, the guilt of the accused for the crime charged was not established beyond reasonable doubt

The presentation of the dangerous drugs as evidence in court is material if not indispensable in every prosecution for the illegal sale of

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[11] *Rollo*, pp.11-18.

dangerous drugs. As such, the identity of the dangerous drugs should be established beyond doubt by showing that the dangerous drugs offered in court were the same substances bought during the buy-bust operation. This rigorous requirement, known under RA No. 9165 as the chain of custody, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[12] As the Court has expounded in *People v. Catalan*,[13] the dangerous drugs are themselves the *corpus delicti*; hence:

> To discharge its duty of establishing the guilt of the accused beyond reasonable doubt, therefore, the Prosecution must prove the *corpus delicti*. That proof is vital to a judgment of conviction. On the other hand, the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 when the dangerous drugs are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.[14]

As the means of ensuring the establishment of the chain of custody, Section 21 (1) of RA No. 9165 specifies that:

> (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.

The following guideline in the Implementing Rules and Regulations (IRR) of RA No. 9165 complements Section 21 (1) of RA No. 9165, to wit:

> (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 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, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, 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;

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12 *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.
13 G.R. No. 189330, November 28, 2012, 686 SCRA 631.
14 Id. at 642-643.

Based on the foregoing statutory rules, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the marking after seizure by the arresting officer, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. This stricture is essential because the succeeding handlers of the contraband would use the markings as their reference to the seizure. The marking further serves to separate the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence.[15] Indeed, the preservation of the chain of custody vis-à-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.

An examination of the records reveals that the buy-bust team did not observe the statutory procedures on preserving the chain of custody.

To start with, the State did not show the presence during the seizure and confiscation of the contraband, as well as during the physical inventory and photographing of the contraband, of the representatives from the media or the Department of Justice, or of any elected public official. Such presence was precisely necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.[16]

It is notable that PO1 Diocena, although specifically recalling having marked the confiscated sachets of *shabu* with the initials of the accused immediately after the seizure, did not state, as the following excerpts from his testimony indicate, if he had made his marking in the presence of the accused himself or of his representative, and in the presence of a representative from the media or the Department of Justice, or any elected public official, to wit:

> Q - What did you do with the plastic sachets you bought or the plastic sachets handed to you and the other plastic sachet Insp. Lim recovered from him?
>
> A - I put markings, Ma'am.
>
> Q - What markings did you place on the plastic sachets?
>
> A - LEM-1, LEM-2 and LEM-3.

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15 *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.
16 *People v. Catalan*, supra note 13, at 644.

Q - And after marking those specimen, what did you do with them?

A - We brought them to the police station.

Q - What did the police station do with the plastic sachets?

A - Our investigator took pictures and brought them to the PNP Crime Laboratory.

x x x x

Q - You said that you put markings on the specimen at the target area?

A - Yes, Ma'am.

Q - You prepared the listing of all the specimen and marked money you recovered from the accused?

A - No, Ma'am.

Q - When you returned to the police station that was the only time that you took pictures of the marked money?

A - Yes, Ma'am.

Q - To whom did you turn it over?

A - To our investigator, Ma'am.

Q - What is the name of your investigator?

A - PO1 Dennis Gorospe, Ma'am.[17]

Similarly, P/Insp. Lim did not mention in his testimony, the relevant portions of which are quoted hereunder, that a representative from the media or the Department of Justice, or any elected public official was present during the seizure and marking of the sachets of *shabu*, as follows:

Q - What did you do with the subject sale and the one you recovered from the accused?

A - I told PO1 Diocena to mark it, the three heat-sealed plastic sachets.

Q - Do you know the markings placed on the plastic sachets?

A - LEM-1, LEM-2 and LEM-3.

Q - And aside from marking the specimen, what did you do with them?

A - I apprised the suspect of his rights, then right after that we went to the headquarters.

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[17] TSN of April 23, 2008, pp. 8-15.

Q - And after you brought the accused and the specimen to the headquarters, what did you do next with the specimen?

A - We submitted them to the Crime Laboratory for verification.

Q - Who personally brought them to the Crime Laboratory?

A - If I am not mistaken it was also PO1 Diocena and the other men.

x x x x

Q - Where was Officer Diocena when he put markings on the three plastic sachets you recovered?

A - When I arrested the subject, he alighted from the motorcycle and he helped me in arresting the accused, it was just then beneath the Meralco post.

Q - And the markings represent the initials of the accused?

A - I don't know, Ma'am, LEM, maybe, Ma'am.

Q - But it was Officer Diocena who put the markings?

A - Yes, Ma'am.

Q - Was there an inventory or list of the things you recovered from the accused?

A - Yes, Ma'am.

Q - Did you ask the accused to sign that inventory?

A - I was not able, Ma'am.[18]

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21(1), *supra*, were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.

Secondly, the records nowhere indicated, contrary to the claim of P/Insp. Lim, that the buy-bust team, or any member thereof, had conducted

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[18] TSN of July 17, 2008, pp. 9-17.

the physical inventory of the confiscated items. We know this because the State's formal offer of evidence did not include such inventory, to wit:

> PROSECUTOR ARAGONES:
>
> Your Honor, we formally offer Exhibit "A", the Chemistry Report No. D-221-07; Exhibit "B", the request for laboratory examination from the Binangonan Police Station; and Exhibit "C", the subject specimen. This is to prove that after request made by the Binangonan Police Station, examined by the forensic chemical officer, and after examination proved positive to the test for methamphetamine hydrochloride. These exhibits are offered as part of the testimony of the forensic chemist. Exhibit "D", the buy bust money, the P500.00 bill used during the operation; Exhibit "D-1" is the marking placed by Police Officer Diocena. This is to prove that this is the xerox copy of the original buy bust money used during the buy bust operation conducted against the accused. Exhibit "E" is the sworn statement of Police Officer Diocena. This is to prove all the facts alleged in the information and as part of the testimony of the said police officer. Exhibit "F" is the sworn statement of P/Insp. Alfredo Lim to prove all the facts alleged in the information and as part of the testimony of said witness. That would be all for our formal offer of evidence.[19]

Without the inventory having been made by the seizing lawmen, it became doubtful whether any *shabu* had been seized from the accused at all.

And, thirdly, although PO1 Diocena asserted that photographs of the confiscated items and the marked money were taken at the police station,[20] it still behooved him to justify why the photographs of the seized *shabu* was not taken immediately upon the seizure, and at the place of seizure. The State did not explain this lapse. The pictorial evidence of the latter kind would have more firmly established the identity of the seized *shabu* for purposes of preserving the chain of custody.

The last paragraph of Section 21(1) of the IRR of RA No. 9165 expressly provides a saving mechanism to the effect that not every case of non-compliance with the statutory requirements for the physical inventory and photograph of the dangerous drugs being made "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" would prejudice the State's case against the accused. But in order for that saving mechanism to apply, and thus save the day for the State's cause, the Prosecution must have to recognize first the lapse or lapses, and then credibly explain them.[21]

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19 TSN of July 17, 2008, pp. 19-20.

20 Supra note 17.

21 *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 270.

It appears that the application of the saving mechanism in this case was not warranted. The Prosecution did not concede that the lawmen had not complied with the requirement for "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." Also, the Prosecution did not tender any justification why no representatives from the media or the Department of Justice, or any elected public official had been present during the seizure and confiscation of the *shabu*. The omissions, particularly the failure to justify on the part of the lawmen, were strange and improbable, particularly because the records indicated that the lawmen had sufficient time and the opportunity to prepare for the *proper conduct* of the buy-bust operation against the accused due to such operation having come in the aftermath of a successful test buy.

Anent the test buy, PO1 Diocena mentioned the same in his *sinumpaang salaysay*, thusly:

> x x x Na itong sinasabi ng aming asset na alyas "Larry" ay matagal na naming minamanmanan at sa katunayan ay nagsagawa na kami ng Test Buy noong Hulyo 10, 2007 at kami ay nakabili sa kanya ng isang pirasong maliit na plastic na may lamang shabu at amin itong ipinasuri sa RIZAL PNP Crime Laboratory Office na nagbigay ng positibong resulta sa pinagbabawal na droga at siya ay di namin kaagad nahuli sapagkat siya ay huminto pansamantala sa pagbebenta ng iligal na droga. x x x[22]

Similarly, P/Insp. Lim adverted to the test buy in his own *sinumpaang salaysay* as follows:

> x x x Sapagkat ako ay bago lamang dito sa himpilan ng Binangonan, napagalaman ko mula sa aking mga kasamahan na itong sinasabi ng aming asset na alyas "Larry" ay matagal na nilang minamanmanan at sa katunayan ay nagsagawa ng Test Buy noong Hulyo 10, 2007 laban dito kay alyas "Larry" at ang nabiling pinaghihinalaang shabu ay ipinasuri sa RIZAL PNP Crime Laboratory Office na nagbigay ng positibong resulta sa pinagbabawal na droga na kaya lamang hindi nahuhuli itong si alyas "Larry" sa dahilang siya at huminto pansamantala sa pagbebenta ng iligal na droga.[23]

P/Insp. Lim reiterated his story on direct examination, *viz*:

> Q - And what report, if any, was made by that asset aside from there was an ongoing sale of drugs in Calumpang?

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22 Original Records, Criminal Case No. 07-496, p. 6.
23 Id. at 9.

> A - That there was an ongoing sale by alias Larry na matagal na nilang minamatyagan, in fact they have already testbuy noong mga nakaraang taon, eh, wala pa ho ako noon.[24]

In all, the buy-bust team had about 48 days – the period intervening between July 10, 2007, when the test buy was conducted, and August 28, 2007, when the crimes charged were committed – within which to have the media and the Department of Justice be represented during the buy-bust operation, as well as to invite an elected public official of the place of operation to witness the operation. It puzzles the Court, therefore, that the buy-bust team did not prudently follow the procedures outlined in Section 21(1), *supra*, despite their being experienced policemen who knew the significance of the procedures in the preservation of the chain of custody.

With the chain of custody being demonstrably broken, the accused deserved to be acquitted of the serious charges. Even if we rejected the frame-up defense of the accused, the unexplained failures and lapses committed by the buy-bust team could not be fairly ignored. At the very least, they raised a reasonable doubt on his guilt. "A reasonable doubt of guilt," according to *United States v. Youthsey*:[25]

> x x x is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake.

Thus, the accused was entitled to be acquitted and freed, for, as we pointed out in *People v. Belocura*:[26]

> x x x in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. **In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof,**

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[24] TSN of July 17, 2008, p. 4.
[25] 91 Fed. Rep. 864, 868.
[26] G.R. No. 173474, August 29, 2012, 679 SCRA 318, 346-347. Citing *Patula v. People*, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 150-151.

> **that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.**

2.
The CA and the RTC erred in relying on the presumption of regularity in the performance of duty of the arresting officers

Even if the foregoing conclusion already renders any further discussion of the applicability of the presumption of regularity in favor of the members of the buy-bust team superfluous, we need to dwell a bit on the matter if only to remind the lower courts not to give too much primacy to the presumption of regularity in the performance of official duty at the expense of the higher and stronger presumption of innocence in favor of the accused in a prosecution for violation of the *Comprehensive Drugs Act of 2002*.

We have usually presumed the regularity of performance of their official duties in favor of the members of buy-bust teams enforcing our laws against the illegal sale of dangerous drugs. Such presumption is based on three fundamental reasons, namely: *first*, innocence, and not wrong-doing, is to be presumed; *second*, an official oath will not be violated; and, *third*, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption.[27] But the presumption is rebuttable by affirmative evidence of irregularity or of any failure to perform a duty.[28] Judicial reliance on the presumption despite any hint of irregularity in the procedures undertaken by the agents of the law will thus be fundamentally unsound because such hint is itself affirmative proof of irregularity.

The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. Trial courts are instructed to apply this differentiation, and to always bear in mind the following reminder issued in *People v. Catalan*:[29]

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27 *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 229 SCRA 795, 799.
28 Id.
29 Supra note 13, at 646-647.

> x x x We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
>
> Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with *indicia* of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on April 26, 2010 by the Court of Appeals in CA-G.R. CR-H.C. No. 03901 entitled *People of the Philippines v. Larry Mendoza y Estrada*; **ACQUITS LARRY MENDOZA y ESTRADA** on the ground of reasonable doubt; and **ORDERS** his immediate release from detention at the National Penitentiary, unless there are other lawful causes warranting his continued detention.

The Director of Bureau of Corrections is directed to forthwith implement this decision and to report to this Court his action hereon within ten (10) days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO **MARTIN S. VILLARAMA, JR.**
Associate Justice Associate Justice

BIENVENIDO L. REYES
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