THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHELLE BAUTISTA Y GEMATERO @ "MICHELLE BAUTISTA Y YADAO," "MICHELLE," "CAROL," ACCUSED-APPELLANT.

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

Before this Court is an appeal[1] from a Joint Decision[2] dated 29 October 2010 by the Regional Trial Court, City of Valenzuela, Branch 171 in Criminal Case No. 112-V-07 for Violation of Section 5 and Criminal Case No. 113-V-07 for Violation of Section 11, both of Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of which reads:

> "WHEREFORE, premises considered, in Criminal Case No. 113-V-07, the accused MICHELLE BAUTISTA y YADAO is found GUILTY beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165. Consequently, she is hereby ordered to suffer the penalty of life imprisonment plus a FINE of Five Hundred Thousand Pesos (Php500,000.00) each. (sic)
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> Further, in Criminal Case No. 112-V-07, the accused MICHELLE BAUTISTA y YADAO is also found GUILTY beyond reasonable doubt for violation of Section 11, Article II of R.A. No. 9165. The said accused is further ordered to suffer the penalty of imprisonment of twelve years (12) and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum. In addition thereto, the said accused is ordered to pay a FINE of Three Hundred Thousand pesos (Php300,000.00).
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> x x x
>
> SO ORDERED."

Accused-appellant was apprehended at the same time with Henson Pun Chen alias "Nobo," however, the parties were charged in separate Informations. The Information in Criminal Case No. 114-V-07 charging Nobo for violating Section 11 of Article II of R.A No. 9165 was resolved acquitting him of the offense charged due to insufficiency of evidence. Meanwhile, the Information in Criminal Cases Nos. 113-V-07 charging accused-appellant for violation of Section 5 and 112-V-07 for violation of Section 11, both of Article II of R.A. No. 9165 read:

Criminal Case No. 113-V-07[3]

> "That on or about January 25, 2007 in Valenzuela City and within the jurisdictional of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell to PO3 Ronald C. Sanchez, who posed as buyer of zero point zero three (0.03) grams of Methylamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drug.
>
> Contrary to law."

Criminal Case No. 112-V-07[4]

> "That on or about January 25, 2007, in Valenzuela City and within the jurisdiction of this Honorable Court, the

> above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously have in her possession and control, one (1) pc. heat-sealed transparent plastic sachet containing zero-point zero five (0.05) grams of Methylamphetamine Hydrocloride (Shabu), knowing the same to be a dangerous drug.
>
> Contrary to law."

After several postponements[5], herein accused-appellant, assisted by a counsel de officio, was finally arraigned and pleaded not guilty to the violations charged.

Soon, a pre-trial was conducted and terminated on December 10, 2007. Thereafter, trial ensued where the prosecution presented three (3) witnesses, namely: 1) SPO1 Ronald Sanchez, who was tasked to act as the poseur buyer; 2) SPO3 Marife Malinao, who was part of the team in the buy bust operation and acted as the back up and, lastly; 3) PO3 Arnel Soriano who was at the Station at the time the confidential informant came to their office and reported the sale and use of drugs for which the buy bust operation was directed.

The prosecution also offered as part of their evidence, documents, among others, corroborating the testimonial evidence given to prove the violation of R.A. No. 9165: 1) Laboratory Examination[6] of the specimen recovered from the buy bust operation; 2) Physical Science Report[7] of the specimen; 3) Police Blotter and its submarkings[8]; 4) Drug Inventory Report[9]; 5) Certificate of Coordination[10]; and 5) Pre-operation Report[11] showing proof of coordination with Police officers and PDEA.

THE FACTS

The version of the Prosecution[12]

> On 25 January 2007, SPO1 Ronald Sanchez, P/Insp. Juan, PO3 Cunanan, PO3 Martinez, PO3 Britana, PO2 Lim, PO1 Pael and PO1 Aranas conducted a buy bust operation at Lagdameo Street, Barangay Parada, Valenzuela City upon report by a Confidential Informant at Station Anti-Illegal Drugs- Special Operations Unit (SAID SOU), Valenzuela City Police Station that accused-appellant Michelle/Carol and her lived-in partner Henson Pun Chuen, also known as "Nobo," were involved in the sale of illegal drugs. After having learned of this information, they immediately reported the same to their action officer P/C. INSP. Danilo Bugay who relayed the same to P/Insp. Juan and who was thereafter directed to form a team for the buy bust operation. SPO1 Sanchez was assigned as the poseur buyer and the other teams were assigned as back up. Immediately thereafter, SPO1 Sanchez requested for the dusting of the buy bust money consisting of ten (10) pieces of 100 peso bill and consequently, coordinated with the PDEA to which a Certificate of Coordination was issued and after which, proceeded to the target area.
>
> At the informed location, SPO1 Sanchez together with the Informant knocked on the "yellow gate" and they were greeted by Michelle. Upon introduction of SPO1 Sanchez by Informant to Michelle, the former said the magic word "bibyahe ng bato." Michelle on the other hand, asked as to the amount SPO1 Sanchez wanted to buy, to which the latter replied that he would be buying Five Pesos (Php5.00) worth of shabu. Michelle went inside the house, leaving the gate partially opened, giving SPO1 Sanchez the chance to see Nobo, thereafter, the former returned with the illegal items. Michelle gave the illegal items to SPO1 Sanchez, and in exchanged handed out the dusted money consisting of five (5) pieces of one hundred pesos (100.00Php) or five (5) hundred pesos (500.00Php). After confirming that the transparent plastic sachet was indeed shabu, SPO1 Sanchez gave the pre-arranged signal and introduced himself as a police officer. SPO1 Sanchez held and handcuffed Michelle despite the latter's resistance and thereafter recovered another small heat- sealed transparent plastic sachet containing small white crystalline from her back pocket. When Nobo came to rescue, PO2 Malinao and PO3 Soriano arrived and held Nobo. The team then proceeded to the Barangay Hall of Parada for the necessary identification and drug inventory wherein SPO1 Sanchez marked the recovered illegal item subject of buy bust "MYB-1" while PO3 Malinao marked the other illegal item as "MYB-2, and instituted the Inventory Form which was signed by the apprehending officers and the Barangay officials.

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> Subsequently, the team together with accused appellant and Nobo went to the SAID-SOU, blottered the incident and prepared the necessary documents for the filing of the case against accused appellant and Nobo.
>
> After which, PO3 Malinao, SPO1 Sanchez and PO3 Soriano turned over the seized illegal items to SOCO, Kalookan City for laboratory examination where a Physical Science Report was issued finding positive presence of methylamphetamine hydrocholoride, otherwise known as “shabu” while Michelle and Nobo were brought for drug testing.

The version of the Defense[13]

For the defense, the testimonies of the accused appellant and Nobo were offered, countering the allegations of the prosecution. Accused appellant testified that she has no nickname and knows Henson Pun Chen, being his lived-in partner for seven (7) years already.[14] She further averred that she was arrested for alleged possession and selling of illegal drugs[15] on the evening of January 26, 2007 in their residence at Lagdameo Street, Fortune 4 Parada, Valenzuela City.[16] On the other hand, Henson Pun Chen alias “Nobo” testified that he was arrested together with accused-appellant upon attempt to aid Michelle whom he heard to be in the middle of a confrontation with five (5) persons who were looking for a certain Carol, whom Nobo did not know. The defense’s version of the events is as follows:

> On January 26, 2007, accused appellant was coming from Malabon for the “padasal” for her mother’s death anniversary. In the evening thereof, while she was attending to their clothes, dried from the sun, she was arrested for the alleged possession and selling of illegal drugs. Five (5) persons whom she does not recognize came to her home addressing her as “Carol” and directing her to come with them for questioning. She only came to know of the identity of the persons arresting her to be police officers Marife and Sanchez upon the latter’s testimonies in open court.
>
> Accused appellants together with Nobo were residents for almost five (5) months already at Lagdameo Street, Fortune 4 Parada, Valenzuela City. Accused appellant and Nobo were renting a room in a compound consisting of more than five (5) rooms with two (2) gates, painted in red and yellow, respectively, located at the subject address. Both gates were accessible to accused-appellant’s house. SPO1 Sanchez frisked accused-appellant at the “red gate” of her house and upon inquiry on why the latter was being arrested, the persons who held her failed to give an explanation. After which, accused appellant was brought to the detention cell where she came to know of her charge for which she vehemently denied.
>
> The following morning of her arrest, accused appellant was brought to the Barangay Hall. Subsequently, accused appellant was brought to the crime laboratory where she was made to urinate for which result she was not informed of.

Aggrieved by the unfavorable decision of the trial court, the accused-appellant comes to this Honorable Court by Notice of Appeal on 30 January 2013 praying for her innocence on the lone assigned error[17]:

> THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE VIOLATIONS CHARGED.

THIS COURT’S RULING

The defense claims that the prosecution failed to prove beyond reasonable doubt the guilt of the accused-appellant for the violations charged apparently for failing to comply with the procedure mandated by Section 21, Article II of Republic Act No. 9165 on the custody and disposition, seized, or surrendered dangerous drugs, particularly on the inventory and photographing of the retrieved subject illegal drugs alleged to have been recovered from the accused-appellant, in effect casting doubt on the identity thereof.

Further, the defense maintains that although the prosecution established through the testimony of the witnesses that markings in the retrieved specimen were made, such were not done in the presence of the accused-appellant or his representatives. Furthermore, the defense challenges the decision convicting the accused-appellant for failure of the prosecution to establish in evidence the chain of custody as defined in Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

We are not persuaded.

To constitute a violation of Sec. 5, Art. II of R.A No. 9165, particularly, the Illegal Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals, the prosecution must be able to establish the following elements[18]: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. Hence, it is necessary that evidence must be shown that indeed a sale of illegal drugs transpired between the seller and the buyer for a certain consideration corroborated by evidence of corpus delicti, i.e., the substance of the crime[19], which means that there must be actual commission of the crime and someone is criminally responsible therefor[20]. The corpus delicti, in cases involving dangerous drugs, is the dangerous drug itself. The corpus delicti of the illegal sale of dangerous drugs is not established without a showing that the accused possessed, sold and delivered a prohibited drug.[21]

Moreover, the Supreme Court has consistently enunciated that to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be presented[22]: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

In both cases of sale and illegal possession of dangerous drugs, the corpus delicti must be satisfied by the special procedure of custody of the seized drug, properly complied with. Through which, the certainty of the identity and integrity of the seized drug is established in evidence showing that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise the prosecution for possession and sale under R.A. No. 9165 will fail[23].

Sec. 1(b) of the Dangerous Drugs Board Regulation No.1, Series of 2002 defines “chain of custody” as follows:

> “b. 'Chain of Custody' refers to 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.”[24]

To determine whether there has been proper custody and handling of the seized drug, Sec. 21 of Art. II of R.A. No. 9165 provides for the procedure to be observed, which stipulates:

> Sec.21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> 1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from

> whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

The about provision is implemented by Sec. 21 (a), Art. II of the Implementing Rules and Regulations (IRR) of R.A. No. 9164, thus:

> (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;

Accordingly, this Court agrees with the decision[25] of the trial court that there was in fact a sale of illegal drugs between accused-appellant and poseur buyer SPO1 Ronald Sanchez during the buy bust operation properly conducted. It can be positively inferred from the testimony of SPO1 Sanchez that he personally transacted with accused-appellant, directly giving to the former the sachet of shabu exhibited during the trial. Moreover, having been caught in flagrante delicto, the subsequent recovery of the other sachet of illegal drugs from accused-appellant during her arrest is a manifest violation of illegal possession of dangerous drugs prohibited under Sec. 11, Art. II of R.A. No. 9165.

This Court finds untenable the contention of the defense that her guilt to the violations charged was not proven beyond reasonable doubt on the ground that the procedure laid down under Sec. 21, Art. II of R.A. No. 9165, on the custody and disposition, seized, or surrendered dangerous drugs, particularly on the inventory and photographing of the retrieved specimen was not properly observed, thus, casting doubt as to the identity of the seized drug. It has been consistently settled by the Supreme Court that the non-compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 will not necessarily render the items seized or confiscated in a buy-bust operation inadmissible. What is imperative is the “preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.”[26]

In the present case, the failure of the apprehending officers to take pictures of the seized items and “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” is not fatal to her conviction. The law explicitly provides for an exception, giving permissive compliance valid, on justifiable grounds, provided that the integrity and evidentiary value of the seized items are preserved by the apprehending officers. The prosecution has convincingly shown in evidence the continuous and unbroken possession and transfer of the seized illegal drugs from the time of the sale by accused-appellant to poseur buyer, SPO1 Sanchez, to its confiscation by latter and PO3 Manilao, to its inventory at the Barangay Hall, and subsequent turn over with the SOCO, Kalookan City for their appropriate laboratory examination.

The defense cannot rely on mere speculations that the seized items were not marked or without mention as to where and when the markings were done nor whether it was “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.” It is evidently candid from the

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testimonies of SPO1 Sanchez and PO3 Manilao that markings were in fact made by them at the Barangay Hall, where they proceeded immediately after arresting accused-appellant together with the latter. The defense cannot surmise on such belief when in fact it is certain, from the testimonies of the apprehending officers and in the presentation of the seized items during trial that markings were indeed made on the seized items which was subject to examination and cross examination by the defense. In fact, during the formal offer of the seized items, they failed to refute on the same or provide lapses on the manner of custody and safekeeping, which would affect the integrity and evidentiary value of the subject drugs recovered, resulting to its inadmissibility. More so, the fact that the markings are nowhere mentioned in the Certification of Drug Inventory Report is minute as to strengthen their stance of the innocence of accused-appellant.

The further assertion of the defense that markings on the seized items were not immediately made upon apprehension is insignificant to support the assumption that there was deviation from the procedure of custody of dangerous drugs. It is expressly provided under Sec. 21 (a), Art. II of the IRR of R.A. No. 9165 that “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 office/team, whichever is practicable, in case of warrantless seizures.” Hence, when the apprehending officers proceeded, after they have arrested accused-appellant, to the Barangay Hall of Parada for the necessary inventory and there made the necessary markings, there was already substantial compliance of the provisions of the above-mentioned law. Moreover, the failure of the apprehending officer to “immediately after seizure and confiscation, physically inventory and photograph” the prohibited drugs in the presence of the accused as required by Section 21 can be considered as a slight infraction that does not automatically render the seized items inadmissible. Lastly, the non-presentation of the forensic chemist who tested the illegal drugs, contrary to appellant’s contention, is insufficient to acquit him.[27]

What can be gleaned therefore from the provisions of Sec. 21, Art. II of R.A. No. 9165 as well as under its Implementing Rules and Regulation (IRR) is that, strict compliance with the same is not significant. What is essential is the “preservation of the integrity of and the evidentiary value of the seized items” as to determine the guilt or innocence of the accused. In this case, the chain of custody was established through the following links: (1) SPO1 Sanchez marked the sachet of illegal drugs he recovered as “MYB-1,” subject of the buy bust operation and PO3 Malinao marked the other sachet she found as ”MYB-2” on accused-appellant’s person; (2) the request for laboratory examination of the seized specimen “MYB-1” and “MYB-2” was signed by Police Inspector of SAID-SOU Rhoderick B. Juan; (3) the request and marked specimens were received by the Kalookan Crime Laboratory Office; (4) Physical Sciences Report D-36-07 confirmed that the marked sachets of illegal drugs from accused-appellant were indeed shabu; and (5) the marked specimens were offered in evidence as Exhibits “C” and “D.” Thus, for having adequately established the chain of custody of the illegal drugs recovered and absent any proof from the defense that the chain of custody has been compromised or at least any ill motive from the apprehending officers to saddle her from such offense, this Court is not persuaded to relieve the accused-appellant.

This Court hereby concludes that the apprehending team was able to preserve the integrity of the subject drugs and satisfactorily complied with the chain of custody, in effect, the corpus delicti has been established. The denial of the accused-appellant of the allegations against her, unsubstantiated by clear and convincing evidence does not hold water to render her acquittal. Thus, this Court believes that the prosecution was able to discharge the burden of proof that the accused-appellant is guilty beyond reasonable doubt.

IN VIEW OF ALL THE FOREGOING, the appeal is hereby DISMISSED. The assailed 29 October 2010 Joint Decision of the Regional Trial Court, Valenzuela City, Branch 171in Criminal Case no. 112-V-07 for violation of

Section 5 and Criminal Case No. 113-V-07 for violation of Section 11, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 is AFFIRMED.

SO ORDERED.

Salazar-Fernando, (Chairperson) and Bruselas, Jr., JJ., concur.

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[1] Rollo, pp. 26-37.

[2] Rollo, pp. 39-53.

[3] Records, p. 1.

[4] Records, p. 1.

[5] Records, p. 23.

[6] Records, p. 2.

[7] Records, p. 3.

[8] Records, pp. 5-6.

[9] Records, p. 10.

[10] Records, p. 12.

[11] Records, pp. 13-14.

[12] Rollo, p. 30.

[13] Rollo, pp. 24-37.

[14] Rollo, p. 47.

[15] Rollo, p. 32.

[16] Supra, note 14.

[17] Rollo, p. 32.

[18] People vs. Monte, G.R. No. 144317, 5 August 2003.

[19] People vs. Gutierrez, 258 SCRA 70.

[20] People vs. Bautista, G.R. No. 177320, 22 February 2012.

[21] People vs. Posada, G.R. No. 194445, 12 March 2012.

[22] People vs. Alcuizar, G.R. No. 189980, 6 April 2011.

[23] Ibid.

[24] People vs. Obmiranis, G.R. No. 181492, 16 December 2008.

[25] Rollo, p. 39.

[26] People vs. Feliciano, 190179, 20 October 2010.

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[27] People vs. Sultan, G.R. No. 170497, 21 July 2010.

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