PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, MEMBERS: ABDULWAHID, H. S., VS. JANE LONGABELA Y MATARO, PROMULGATED: ACCUSED-APPELLANT.

Ponente: BARZA, J.

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BARZA, J.:

On appeal before this Court is the February 13, 2012 decision[1] of the Regional Trial Court of Quezon City, Branch 82, in Criminal Case No. Q-03-120841, finding accused-appellant Jane Longabela guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On September 9, 2003, appellant Jane Longabela was charged before the trial court for violation of Sec. 5, Art. II of R.A. No. 9165 in an information[2] that reads as follows:

> "That on or about the 3rd day of September 2003 in Quezon City, Philippines the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction 0.13 (zero point thirteen) grm of white crystalline substance containing METHYLAMPHETAMINE HYDROCHLORIDE, a dangerous drug.
>
> Contrary to law."

Appellant pleaded not guilty to the charge. Her petition for bail was denied.

The prosecution presented PO2 Procopio Acueza* and PO3 Ladia Aminkadra* as its witnesses during the hearing of the case.

According to Acueza, a male informant came to their station at the QCPD-Police Station 9 at around 2:00 p.m. of September 3, 2003 to inform their chief, P/Insp. Maramag, regarding the illegal drug activity of one Jane. Upon receiving the tip, P/Insp. Maramag immediately formed a team to conduct a buy-bust operation on Jane. The team was composed of Aminkadra as the poseur-buyer, PO2 Cayabyab, PO2 Mendoza, PO2 Gollem Bellen and Acueza. At around 4:00 p.m., the team proceeded to the place where the alleged illegal drug activity was taking place. Aminkadra then went with the informant to be introduced to Jane while the rest of the team positioned themselves on the other side of the street where they could see the transaction. Acueza saw Aminkadra and their informant talking to appellant, then at the sight of Aminkadra scratching his left ear, which was the pre-arranged signal, the team immediately approached to arrest appellant. Acueza apprehended appellant and recovered from her the buy-bust money consisting of two (2) Php100.00 bills. Acueza said that he turned the recovered buy-bust money over to their desk officer at the police station who in turn gave them to the investigator PO2 Julius Javier. Thereafter, Javier made a request for laboratory examination of the white crystalline substance that was also recovered during the operation. Acueza furthered that he could not recall who turned over the white crystalline substance to Javier and that that was the first time he saw the evidence. On cross-examination, he admitted that he could not identify the plastic sachets as the ones recovered by Aminkadra from appellant and that they did not

coordinate with the Philippine Drug Enforcement Agency (PDEA) in this operation.

Aminkadra's testimony basically corroborated Acueza's testimony pertaining to the buy-bust operation. Aminkadra testified that he placed his initials on the upper left-hand portion on the back of two (2) Php100.00 bills which were used as marked money. During the operation, he saw appellant come from her residence. He approached her together with the informant and the latter introduced him to appellant. He then informed appellant that he wanted to buy shabu worth Php200.00. When appellant agreed to the transaction, he gave her the marked money and she handed him two (2) plastic sachets. Then he gave the pre-arranged signal by scratching his left ear and immediately thereafter appellant was arrested by Acueza.

When asked during the trial to identify the plastic sachets and the markings thereon as the ones he received from appellant, Aminkadra immediately confirmed the same and said that the markings were affixed by the investigator. According to Aminkadra, from the time he received the plastic sachets from appellant up to the time they arrived at the police station, the plastic sachets were in Acueza's custody because he turned them over to Acueza together with the suspect. Then the plastic sachets were given to Javier and PO1 Lopez who went over to the crime laboratory to have the specimen examined which turned out to be positive for methylamphetamine hydrochloride.

On cross-examination Aminkadra admitted that it was the investigator who placed his (Aminkadra) and Acueza's initials on the plastic sachets, that he was in possession of the plastic sachets until he turned them over to Acueza when they arrived at the station, that he did not prepare an inventory receipt and did not take photographs of the items and that he had no idea what happened to the items after the same were turned over to PO1 Lopez for inspection and transmittal to the crime lab.

In two separate orders dated May 10, 2006[3] and February 9, 2011,[4]trial court dispensed with the testimonies of Engr. Leonard Jabonillo, the forensic chemist who examined the specimen and found the same to be positive for methylamphetamine hydrochloride, and Police Senior Investigator Julius Javier upon stipulation of the parties.

On the other hand, the defense offered the sole testimony of appellant Jane Longabela. She testified that she was at home sleeping at around 4:00 p.m. of September 2, 2003, not September 3, 2003 as alleged in the information, when she woke up to a commotion involving her boarder Russel Carriaga. Allegedly, Carriaga was being hurt by three (3) men and they were forcing him to go with them and bring out something but Carriaga had no clue as to what he was supposed to produce. Appellant approached the group and asked what the problem was but she was simply told not to interfere. She then informed the men that she was the owner of the house. Thereafter, the men asked her to go with them along with Carriaga to which appellant obliged. Thus, they were brought to the police station.

Appellant further testified that the men demanded Php30,000.00 from her in exchange for her freedom. But she questioned the demand because she was being arrested without having committed any violation. When she did not pay she was ordered to stay in the precinct. Thereafter, somebody brought out a plastic sachet, a pair of scissors and “tawas.” The “tawas” was then transferred to the plastic sachet and she was instructed to hold the plastic sachet. When she refused to do so, she was threatened and brought inside the jail cell and thereafter was charged with the aforementioned violation of law.

In the appealed decision dated February 13, 2012, the trial court found appellant guilty beyond reasonable doubt of violating Sec. 5, Art. II of R.A. No. 9165. The trial court regarded the testimonies of the prosecution witnesses with credibility and upheld the validity of the buy-bust operation despite the presence of procedural lapses such as the taking of photographs and inventory of the specimen. As for appellant's allegation of extortion, the trial court held that the same was unsubstantiated and did not overcome the presumption of regularity in the performance of

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duty by law enforcers. The trial court thus disposed the case as follows -

> "WHEREFORE, premises considered, judgment is hereby rendered finding accused JANE LONGABELA y MATARO guilty beyond reasonable doubt of a violation of Section 5, Article II of R.A. No. 9165.
>
> Accordingly, she is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Five Hundred Thousand (Php 500,000.00) Pesos.
>
> The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drugs subject thereof for proper disposition and final disposal.
>
> SO ORDERED."

Aggrieved by her conviction, appellant filed the instant appeal assigning the following errors:

> I. The court a quo gravely erred in giving credence to the testimonies of the prosecution witnesses on the alleged buy-bust operation.
>
> II. The court a quo gravely erred in convicting the accused-appellant despite the inadmissibility in evidence of the two (2) plastic sachets.
>
> III. The court a quo gravely erred in convicting the accused-appellant despite the prosecution's failure to establish the proper chain of custody of the alleged seized dangerous drugs.
>
> IV. The court a quo gravely erred in convicting accused-appellant despite the inherent weakness of the prosecution evidence.

In seeking her acquittal, appellant essentially questions the circumstances surrounding the buy-bust operation for lack of any testimony in the direct examination of Aminkadra pertaining to his conversation with appellant during the buy-bust operation. She also contends that the police officers failed to properly observe the chain of custody when Aminkadra failed to mark upon confiscation, take photographs and make an inventory of the shabu subject of the buy-bust operation. Appellant basically argues that the prosecution failed to preserve the integrity of their evidence against her. She particularly notes the non-presentation of PO1 Lopez, who delivered the recovered plastic sachets to the PNP crime laboratory, as witness.

The Court finds sufficient ground to acquit appellant of the charge.

It has been consistently ruled that the elements needed to be proven to successfully prosecute a case of illegal sale of drugs are: (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. Simply put, the prosecution must establish that the illegal sale of the dangerous drugs actually took place together with the presentation in court of the corpus delicti or the dangerous drugs seized in evidence. Central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from the accused.[5]

The duty of seeing to the integrity of the dangerous drugs and substances is discharged when the arresting law enforcer ensures that the chain of custody is unbroken. Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, defines the chain of custody as[6] -

> 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 [was] of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition.

> Par. 1, Sec. 21 of Art. II of R.A. No. 9165 provides -
>
> 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:
>
> 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 above rule is implemented by Section 21 (a) of the Implementing Rules and Regulations which expounds on how it is to be applied, and notably, also provides for a saving mechanism in case the procedure laid down in the law was not strictly complied with[7] -

(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 item.

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.[8]

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.[9]

In the case at bar, the credibility of the prosecution witnesses who were in charge of the buy-bust operation and custody of the evidence thereafter is remarkably questionable, which consequently casts a cloud of doubt on the evidence, particularly the specimen, that was presented in court.

The Supreme Court has repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. The Supreme Court has reviewed such factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[10]

Cognate to this, while the entrenched rule is that the assessment of witnesses and their testimonies is a matter best undertaken by the trial court which had the opportunity to observe the demeanor, conduct or attitude of the witnesses, the findings of the lower court on this point will be reversed on appeal, if it overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case.[11]

First, the prosecution could not make up its mind on who was really in custody of the drugs from the time appellant was arrested until it was turned over to the police station for marking and examination. During his direct examination, Aminkadra explicitly stated that Acueza was in custody of the drugs from the time he recovered the drugs from appellant -

Q:

From the time you received this plastic sachet containing dangerous drugs up to the time you arrived at the station, who was in custody of the drugs?

A:

PO2 Actueza (sic), sir.

Q:

How did it come to the possession of PO2 Actueza (sic)?

A:

We gave it to him together with the suspect.[12]

Then during the cross-examination, the tenor of Aminkadra's testimony changed. This time he said that the drugs were in his possesssion until he turned them over to Acueza at the police station -

Q:

Q: Who was in possession of the item from Lantana to Station 9?

A:

Me, sir.

Q:

To whom did you turn over these plastic sachets?

A:

To the investigator, sir.

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Q:

When did you turn over this to Actueza (sic)?

A:

When we arrived at the station.[13]

Second, it is unclear who exactly between Acueza and Aminkadra turned over the drugs to the investigator for marking and submission to the crime laboratory. Based on the above-cited testimony of Aminkadra, he turned over the evidence to Acueza when they arrrived at the police station but it was also him (Aminkadra) who turned over the same to the investigator. It is quite difficult to imagine, even with the common mind, how Aminkadra could have passed the evidence to the investigator when he had already given the same to Acueza upon reaching the police station. But somewhere in Aminkadra's direct testimony it is implied that Acueza was the one who handed the evidence to the investigator -

Q:

After you turned over these items you do not know what happened to these plastic sachets?

A:

It was already received by the crime lab result to positive.

Q:

You don't know where Actueza (sic) turned over this plastic sachet?

A:

To our investigator, sir.[14]

While it may be possible that the Acueza may have been the one who turned over the shabu to the investigator after he received them from Aminkadra, the problem is Acueza could not recall who really did turn over the shabu to the investigator -

Q:

What happened when they were turned over to the investigator?

A:

Our investigator made the request for laboratory examination for the recovered evidence.

Q:

What evidence?

A:

The recovered white crystalline.

Q:

Who turned over that white crystalline?

A:

I cannnot recall but I saw it with the investigator Julius Javier.

Q:

Was that the first time you saw that evidence?

A:

Yes, sir.[15]

Based on the above pronouncement of Acueza, it could not have been possible that it was he who actually turned over the specimen to the investigator. Otherwise, he would have been able to recall that it was he himself who did the turnover. Acueza's testimony thus totally contradicts Aminkadra's statement.

Lastly, the third and most fatal of all the inconsistencies and errors committed by the prosecution witnesses is their failure to establish with certainty that the shabu that was presented in court is the same shabu that was obtained from appellant. Acueza's testimony on whether the specimen that he saw with the investigator is the same specimen that was recovered from appellant could not be counted upon because he did not actually see the specimen that was obtained from appellant at the time of the latter's arrest. It may be worthy to note that Acueza admitted that the first time he saw the evidence allegedly to have been taken from appellant was only when he saw the same already in the possession of the investigator. Thus, he did not have any personal knowledge if the specimen that was turned over to the investigator was the one that Aminkadra received from appellant as a result of the buy-bust operation. Moreover, he admitted that he could not identify the plastic sachet that Aminkadra recovered from appellant -

Q: The plastic sachet that Ladia recovered and the other one, you cannot identify that?

A: I cannot identify that, sir.[16]

As for Aminkadra, his testimony is just completely unreliable for its glaring inconsistencies which are material in nature. It is also noteworthy that Aminkadra admitted on cross-examination that he did not take any photograph or inventory of the recovered specimen and that he no longer had any knowledge of what happened to the same after it was turned over to PO1 Lopez -

Q:

You did not prepare an inventory receipt?

A:

No, sir.

Q:

You did not take photographs of the confiscated items?

A:

No advise, sir.

xxx xxx xxx.

Q:

After you turned over these items, you do not know what happened to these plastic sachets?

A:

It was received by the crime lab result to positive.

Q:

You don't know where Actueza (sic) turned over this plastic sachet?

A:

To our investigator, sir.

Q:

I thought it was turned over to the crime?

A:

Yes, sir. After the inventory.

Q:

You were not with Actueza (sic) when you brought this item to the crime lab?

A:

No, sir. It was inspected by PO1 Lopez, sir.

Q:

When you turned over this document to PO1 Lopez you don't know what happened to those items?

A:

I do not know, sir.

Q:

You were surprised that the plastic sachets were already in the possession of the public prosecutor?

A:

Yes, sir.

Based on all the cited testimonies of the prosecution witnesses, there is an apparent break in the chain of custody of evidence. While Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 excuses non-compliance with the afore-quoted procedure, the same holds true only for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. Here, the failure of the

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buy-bust team to comply with the procedural requirements cannot be excused since there was a break in the chain of custody of the substance taken from appellant. It should be pointed out that the identity of the seized substance is established by showing its chain of custody.[17]

The following are the links that must be established in the chain of custody in a buy-bust situation: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[18]

The fact that it is not clear as to who had possession of the confiscated items from the time of appellant's arrest up to the time the same was delivered and turned over to the investigator already constitutes a break in the chain of custody. In addition, it had not been sufficiently proven who made the turnover to the investigator, and there is no adequate proof to show that the specimen that was transmitted to the crime lab and thereafter to the court was the same specimen that was obtained from appellant because the items were never marked, photographed and inventoried at the time of confiscation. There was no way of authenticating the evidence that was turned over to the investigator as indeed the confiscated items from the buy-bust operation. The person who was alleged at one point to be the one who made the turnover to the investigator and the one who accompanied in the transmittal of the specimen to the crime lab could not identify the specimen as the one recovered from appellant because the first time he saw the specimen was only during the turnover to the investigator. In other words, he never actually saw the specimen at the time it was confiscated from appellant and at the time it was being transported from the arrest to the police station. As a result, the identity of the corpus delicti, the drug itself, remains doubtful.

Hence, in view of the foregoing discussion, the Court finds compelling reason to acquit appellant of the crime charged against her. Consequently, We need not pass upon appellant's defense of denial and frame-up. It is a well-entrenched rule in criminal law that the conviction of an accused must be based on the strength of the prosecution’s evidence and not on the weakness or absence of evidence of the defense.[19]

WHEREFORE, finding merit in the appeal, the same is hereby GRANTED. The appealed judgment of conviction is hereby REVERSED and SET ASIDE, and a new judgment is hereby rendered finding appellant Jane Longabela NOT GUILTY of violating Section 5, Article II of Republic Act No. 9165. Unless convicted for any other crime or detained for some lawful reason, appellant is ordered RELEASED immediately.

SO ORDERED.

Barza, and *Dimagiba, JJ., concur.

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*vice J. Ramon A. Cruz, per Office Order No. 135-14-ABR dated April 8, 2014

[1] Original Records, pp. 233-240.

[2] Ibid., pp. 1-2.

*Sometimes referred to in the records and TSN as Actueza.

*Sometimes referred to in the records and TSN as Amikadran.

[3] Original Records, pp. 96-97.

[4] Ibid., pp. 205-206.

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[5] People of the Philippines vs. Freddy Salonga, G.R. No. 194948, September 2, 2013.

[6] People of the Philippines vs. Hadji Socor Cadidia, G.R. No. 191263, October 16, 2013.

[7] People of the Philippines vs. Linda Alviz, et al., G.R. No. 177158, February 6, 2013.

[8] Junie Mallillin vs. People of the Philippines, G.R. No. 172953, April 30, 2008.

[9] Ibid.

[10] People of the Philippines vs. Edgardo Fermin, et al., G.R. No. 179344, August 3, 2011.

[11] Ibid.

[12] TSN dated March 9, 2010, p. 7.

[13] TSN dated March 9, 2010, p. 9.

[14] TSN dated March 9, 2010, p. 9.

[15] TSN dated November 12, 2007, p. 8.

[16] TSN dated November 12, 2007, p. 13.

[17] Supra, note 10.

[18] Ibid.

[19] People of the Philippines vs. Wilson Suan, G.R. No. 184546, Feburary 22, 2010.

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