

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERDINAND LOPEZ Y HENRY, ACCUSED-APPELLANT.

Ponente: GARCIA, R. R. J.

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GARCIA, R. R. J.:

Before Us is an appeal from the Judgment[1] dated February 28, 2011 of the Regional Trial Court, Branch 35, Calamba City in Criminal Case No. 13704-05-C finding herein accused-appellant Ferdinand Lopez y Henry guilty beyond reasonable doubt of the crime of illegal possession of zero point two three (0.23) gram of methamphetamine hydrochloride or shabu, defined and penalized under Section 11, Article II of RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposing upon him the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months; and to pay a fine in the amount of Three Hundred Thousand Pesos (P300,000.00), the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused, Ferdinand H. Lopez, GUILTY beyond reasonable doubt of the crime of violation of Sec. 11 of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentencing [him] to suffer imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of three hundred thousand pesos (P300,000.00).

The subject prohibited drug is hereby ordered confiscated in favor of the government, and should be turned over to the Philippine Drug Enforcement Agency for disposition in accordance with law.

SO ORDERED.[2]

THE FACTS

In an Information[3] dated September 23, 2005, appellant Ferdinand Lopez y Henry was charged with violation of Section 11, Article II of RA No. 9165 committed as follows:

That on or about August 24, 2005 at Brgy. Timugan, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being licensed or authorized by law did then and there willfully, unlawfully and feloniously have in his possession, custody and control four (4) small heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride also known as shabu a prohibited drug, weighing 0.23 gram, and several other plastic sachets with traces of shabu in violation of the aforementioned provision of law.

CONTRARY TO LAW.[4]

During the arraignment on October 25, 2006, appellant, with the assistance of counsel, pleaded not guilty.[5] Thereafter, trial on the merits ensued.

The prosecution presented two (2) witnesses, namely: PO2 Odilon[6] Ilagan[7]; and SPO2 Danilo Satuito[8].

The testimony of Forensic Chemist Police Senior Inspector Donna Villa P. Huelgas was dispensed with after the parties stipulated as to the genuineness and due execution of Chemistry Report Number D-952-05[9] dated

August 28, 2005.[10]

The version of the prosecution may be summarized as follows:

On August 24, 2005, at around 7:00 pm., the Los Baños Police Station received an information from an asset that there was a group of persons who were repacking shabu at the house owned by appellant Ferdinand Lopez in Barangay Timugan, Los Baños, Laguna. Consequently, the police chief sent SPO2 Danilo Satuito and PO2 Odilon Valencia Ilagan with the asset in order to verify the report.

On that same day of August 25, 2005, at around 8:00 pm, the police asset led PO2 Odilon Valencia Ilagan and SPO2 Danilo Satuito to a nipa hut which has an open terrace in front. The terrace was only three (3) meters away from the barangay road but was somewhat obscured by plants. The police officers saw three (3) men in the terrace, later identified as appellant, Mark[11] Sombillo, and Rizaldo San Valentin. The men were in the act of repacking shabu. Appellant specifically was refilling a sachet while holding a pair of scissors. Sombillo was also holding a plastic sachet, while San Valentin was merely standing around.

Convinced that the three (3) men were committing a crime in plain view, PO2 Odilon Ilagan and SPO2 Danilo Satuito immediately arrested appellant and Rizaldo San Valentin. Unfortunately, their companion Mark Sombillo was able to get away. Appellant and San Valentin were taken to the Los Baños Police Station, along with the illegal contraband confiscated from them as follows: four (4) heat-sealed plastic sachets containing white crystalline substance suspected to be shabu; sixteen (16) other plastic sachets containing only traces of white crystalline substance suspected to be shabu, or a total of twenty (20) sachets. Also confiscated from appellants were: a bamboo tweezer; two (2) lighters; a pair of scissors; a bundle of forty-three (43) plastic bags; and two (2) strips of crumpled foil.[12]

PO2 Odilon Ilagan testified that he marked the confiscated shabu with his initials “OVI”. Thereafter, he prepared a request that the same be forwarded to the PNP Crime Laboratory for examination. In open court, however, he identified four (4) sachets as among those he confiscated from appellant, one of which was marked “TMN-18”.

The records show that the delivery to the PNP Crime Laboratory in Camp San Vicente, Calamba City was effected four (4) days after appellant's arrest, or on August 28, 2005. Twenty (20) sachets marked “TMN-1” to “TMN-19”, inclusive, and “TMG-2” were delivered by a certain PO2 Dreje, as evidenced by a Request for Laboratory Examination[13] dated August 24, 2005.

In Chemistry Report Number D-952-05[14] dated August 29, 2005, Forensic Chemist Police Senior Inspector Donna Villa P. Huelgas found that the plastic sachets marked “TMN-1”, “TMG-2”, “TMN-18”, and “TMN-19” gave positive result for Methamphetamine hydrochloride, also known as shabu, weighing zero point zero five (0.05) gram, zero point zero four (0.04) gram, zero point zero four (0.04) gram, and zero point ten (0.10) gram, respectively, or a total of zero point two three (0.23) gram. The remaining sixteen (16) plastic sachets marked “TMN-2” to “TMN-17”, inclusive, all of which contained traces of white crystalline substance, also tested positive for Methamphetamine hydrochloride.

While criminal complaints were filed against appellant and his companions Rizaldo San Valentin and Mark Sombillo, the Office of the Provincial Prosecutor of Calamba City found probable cause only against appellant and thereafter dismissed the case against San Valentin and Sombillo.[15]

For the defense, two (2) witnesses were presented, namely: appellant[16] himself; and his wife Carmelita Lopez[17].

Appellant raised the defense of denial and frame-up. In the evening of August 24, 2005, he was eating dinner

inside his house with his wife Carmelita. At around 7:50 pm, Mark Sombillo arrived at his house to repair appellant's broken cellular phone. Minutes later, Rizaldo San Valentin arrived because he, too, had a cellular phone for repair. Because of the heat, the door of his house was opened. All of a sudden, a man wearing a blue shirt with the word "PULIS" printed on it entered the house. The man, later identified as PO2 Odilon Ilagan, drew a gun and shouted "ikaw ba si Eddie Lopez na binayaran ni Erwin Banzon para pumatay sa akin"[18]? Appellant denied PO2 Ilagan's allegations. However, two (2) more men arrived, one of whom was holding a black box while the other was later identified as SPO2 Danilo Satuito. The police officers then took appellant to the police station, insisting that he was the one who was hired to kill PO2 Ilagan.

The testimony of appellant was corroborated by his wife Carmelita Lopez who testified that on August 24, 2005, she was at home watching television. With her were appellant, Rizaldo San Valentin and Mark Sombillo, the latter was repairing appellant's broken cellular phone. At around 7:30 to 8:00 pm, PO2 Odilon Ilagan entered the house with a gun. PO2 Ilagan asked if appellant was the one paid by a certain Erwin Banzon to kill the former. Appellant denied the charge but he was still hauled to the police station.

In the assailed Judgment[19] dated February 28, 2011, the court a quo found appellant guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs. It gave credence to the testimonies of the prosecution witnesses that appellant was seen in flagrante delicto repacking shabu into smaller sachets in the terrace of his house in plain view of the police officers. The pertinent portions of the decision are quoted:

From the evidence presented, it was established on 24 August 2005, SPO2 Satuito, PO2 Ilagan and several police officers were in the police station when they received information that three (3) persons were packing shabu inside the house of Ferdinand Lopez located at Barangay Timugan, Los Baños, Laguna. At around 8:00 in the evening, SPO2 Satuito and PO2 Odilon Ilagan proceeded to the target area to conduct surveillance operation to verify if the information was true. When they arrived, SPO2 Satuito and PO2 Ilagan saw three (3) persons in front of the extension of the house of Ferdinand Lopez, "sa harapan ng kubo." The three were packing shabu. The three (3) were identified as Ferdinand Lopez, Mark Sombillo and Rizaldo San Valentin. Upon seeing this, SPO2 Satuito and his companion immediately arrested the three. SPO2 Satuito and his companion also confiscated the black box, two (2) lighters, an improvised bamboo clip, bundles of small plastic sachets of shabu collectively marked. Inside the black box are three (3) pieces of crumpled aluminum foils. The plastic sachets with marking "TMN-1" to "TMN-18" were sent to the PNP crime laboratory for examination. Chemistry Report Number D-925-05 revealed that the plastic sachets were found positive for methamphetamine hydrochloride, a dangerous drug.

From the foregoing, there is no doubt that Ferdinand Lopez was indeed in possession of the dangerous drug when he and two others were arrested by PO2 Ilagan, SPO2 Satuito and several police officers on 24 August 2005.

Accused Ferdinand Lopez denied the accusation against him. He alleged that on 24 August 2005, at around 7:30 in the evening, he, Rizaldo San Valentin and Carmelita Lopez were watching Mark Sombillo fix Ferdinand's cellphone inside the house of Ferdinand when suddenly armed men arrived and arrested them. In effect, Ferdinand want to impress before this Court that he was framed and the plastic sachet found in his possession was planted. The Court, however, is not impressed.

x x x

In the present case, the Court finds that police officers were performing their duty on 24 August 2005. Being police officers, they were tasked to monitor and apprehend illegal activities in the barangay. Based on the information that three (3) persons were packing shabu inside the extension of Ferdinand's house, SPO2 Satuito and PO2 Ilagan were tasked to determine the veracity of the information. During their operation, SPO2 Satuito and PO1 Ilagan positively saw Ferdinand, Mark Sombillo and Rizaldo San Valentin were indeed packing shabu.

The Court likewise found no improper motive on the part of the police officers as prior to 24 August 2005, Ferdinand did not know the police officers. Accordingly, the police officers' testimonies with respect to the surveillance operation, subsequent arrest of the accused and the seizure of the regulated drug in accused's possession must be accorded full faith and credence.[20]

Hence, this appeal in which appellant raised the lone ASSIGNMENT OF ERROR[21], to wit:

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE SEIZED SHABU.

THE ISSUE

The sole issue in the instant case is whether or not the court a quo correctly found appellant guilty beyond reasonable doubt of the crime of illegal possession of zero point two three (0.23) gram of shabu.

THE RULING

The instant appeal is impressed with merit.

Appellant contends that the court a quo gravely erred in convicting him of illegal possession of dangerous drugs despite the prosecution's failure to establish the chain custody of the seized shabu. This was clearly demonstrated by the fact that arresting officer PO2 Odilon Ilagan testified that he marked the sachets containing the seized shabu with his initials "OVI". During the hearing, however, what was presented and identified by him were sachets marked "TMN-1" to "TMN-19", inclusive, and "TMG".

We agree.

In the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very corpus delicti of the offense and, in sustaining a conviction therefor, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. To remove any doubt or uncertainty on the identity and integrity of the seized drug, the 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 illegal possession of dangerous drugs under R.A. No. 9165 fails.[22]

In order to ensure that the identity and integrity of the seized drugs have been preserved from the time they were confiscated from the accused until their presentation as evidence in court, the chain of custody must be maintained. The chain of custody is basically the duly recorded authorized stages of transfer of custody of seized dangerous drugs, from their seizure or confiscation to receipt thereof in the forensic laboratory for examination to safekeeping to presentation in court for destruction.[23]

In order to establish the chain of custody, the following links must be established: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[24]

In the case at bench, none of the above-mentioned links was established by the prosecution.

The first crucial link in the chain of custody is the seizure and marking of the illegal drug. Marking of the seized drugs immediately after they are seized is crucial because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thereby preventing switching, "planting", or contamination of evidence.[25]

Here, there was a discrepancy in the markings of the subject drugs which the prosecution failed to explain. During the hearing on May 28, 2008, PO2 Odilon Ilagan testified that after arresting appellant, he confiscated the sachets in the latter's possession and marked the seized items with his initials "OVI". Considering that the subject sachets were not yet available during that hearing, the prosecution requested for a continuance of his testimony. On the continuation of his direct-examination on September 9, 2009, PO2 Ilagan reaffirmed his statement that he marked the confiscated sachets of shabu with his initials "OVI". Later, he identified in open court the sachets of shabu allegedly seized from appellant, but none of them was marked with his initials "OVI". They were instead marked "TMN". Additionally, Chemistry Report Number D-952-05[26] prepared by Forensic Chemist Police Senior Inspector Donna Villa P. Huelgas; the Memorandum[27] dated August 24, 2005 sent by Police Chief Inspector Potenciano la Torre Escobel to the Provincial Prosecutor of Los Baños, Laguna; the Request for Laboratory Examination[28] dated August 24, 2005, were all unanimous that the markings on the subject sachets were "TMN-1" to "TMN-19", inclusive, and "TMG-2". We quote the pertinent portions of the testimony of PO2 Ilagan, to wit:

TSN dated May 28, 2008

Q. How about the confiscated shabu, what did you do with it?

A. I marked it with my initials "OVI" and made a request for the same to be forwarded at [Camp] Vicente Lim Crime Laboratory ma'am.[29]

x x x

TSN dated September 9, 2009

Q. You also said that the confiscated shabu from the accused was marked by you "OVI"?

A. Yes ma'am. That is my initial.

x x x

Q. What about the other sachets of shabu Mister witness, will you please tell us where did you confiscate the other sachets of shabu?

A. From Ferdinand Lopez ma'am.

Q. Why do you say that these were the items you confiscated from Ferdinand Lopez?

A. Because of my markings I put, ma'am.

Q. What are those markings placed?

A. "OVI" ma'am.

x x x

Q. Why do you say that this is also another specimen recovered from the accused?

x x x

A. Because of the markings ma'am.

Q. What marking?

A. PMM-18 ma'am [sic].[30] [Emphasis supplied]

The inconsistency between the marking "OVI" as testified by PO2 Odilon Ilagan and the markings "TMN-1" to "TMN-19", inclusive, and "TMG-2" as found in the records which the prosecution failed to explain leads to the conclusion that there was an irregularity in the first link of the chain of custody.

Furthermore, the records are patently wanting as to how, when and where the markings on the subject shabu were done and who witnessed the same. While PO2 Odilon Ilagan testified that he was the one who marked the seized shabu, he failed to elucidate on the circumstances surrounding the same. He did not even state that the marking was witnessed by appellant, or whether it was done at the place of arrest or at the police station. Also, the Pinagsamang Salaysay[31] dated August 26, 2005 executed by PO1 Odilon Ilagan and SPO2 Danilo Satuito were silent with regard to the marking of the drugs seized. In *People of the Philippines vs. Caranto*[32], the Supreme Court ruled that the marking of the seized items should be done (1) in the presence of the apprehended violator; and (2) immediately upon confiscation.

Another gap in the chain of custody is apparent from the lack of evidence presented by the prosecution to prove that the sachets of shabu allegedly confiscated from appellant are the same sachets that were delivered to the forensic chemist, and finally to the court a quo. The records are glaringly wanting to show the manner of handling of the evidence, precautions taken, and other significant circumstances after the seized sachets of shabu were marked until the same was turned over to the court a quo.

Prosecution witnesses SPO2 Danilo Satuito and PO2 Odilon Ilagan were both silent with regard to whether they turned over the seized illegal drugs to an investigating officer. As a matter of fact, the identity of the investigator was not even mentioned by the prosecution or any of the arresting officers. The only clue to the identity of the investigating officer is the Request for Laboratory Examination[33] dated August 24, 2005 which stated that the same was prepared by a PO2 Joselito Miran Dreje with the designation of "Investigator".

The identity of the investigator and records of what he did with the seized shabu is of paramount importance herein considering that the same was in his custody for four (4) days. This is evidenced by the rubber stamp on the Request for Laboratory Examination[34] dated August 24, 2005 showing that the sachets reached the Crime Laboratory only on August 28, 2005. The prosecution should have shown what the investigator did with the seized shabu and how he safekept the same while in his custody for four (4) days. Moreover, the delay in the delivery of the seized drugs was in itself a contravention of Section 21(2) of the Comprehensive Dangerous Drugs Act of 2002 which mandates that the same should be submitted to the Forensic Laboratory for a qualitative and quantitative examination within twenty-four (24) hours from their seizure. Again, this procedural lapse remained unexplained.

There is likewise no evidence to show who received the drugs in behalf of the crime laboratory; how it reached the forensic chemist who conducted the qualitative examination thereon; and who took custody of the drugs after the same were tested until they were delivered to the court a quo. While the testimony of Forensic Chemist Police Senior Inspector Donna Villa P. Huelgas was dispensed with after the same was stipulated upon[35], the stipulations were limited to the genuineness and due execution of Chemistry Report Number D-952-05[36] dated August 28, 2005, and does not cover the manner on how the specimens were handled after her examination.

In *Mallinlin vs. People of the Philippines*[37], the High Court ruled that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it was offered in evidence, in such a way that every person who touched it would describe how and from whom it was received, where it was and what happened to it while in the possession of the witness, the condition in which it was received and the condition in which it was delivered to the next link in the chain.

Finally, it must be noted that no inventory of the seized items were presented before the court a quo. This lead to the inescapable conclusion that the arresting officers did not comply with the requirements of Section 21, paragraph 1, Article II of RA No. 9165 that mandates the apprehending officers to immediately take an inventory of the items confiscated. While lapses in the compliance therewith would not necessarily result in the acquittal of the accused, the same must be explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved. Unfortunately in this case, not only were the procedural lapses committed by the arresting officers unexplained, the integrity and evidentiary value of the seized shabu were not clearly preserved.[38]

The totality of all the aforementioned procedural lapses effectively produced serious doubts on the integrity and identity of the corpus delicti, especially in the face of allegations of frame-up.

The failure of the prosecution to establish the evidence's chain of custody is fatal to its case. Under no circumstance can we consider or even safely assume that the integrity and evidentiary value of the drug was properly preserved by the apprehending officers. There can be no crime of illegal possession of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drugs. This may be gleaned from the analogous case of *Valencia vs. People of the Philippines*[39], wherein the Supreme Court acquitted the accused therein ratiocinating that:

Verily, the records are bereft of any evidence, which would clearly show that the said plastic sachets were indeed marked in the presence of Valencia. Nor was there any evidence as to the identity of the individual who brought the seized plastic sachets from the police station to the PNP Crime Laboratory for examination. x x x

x x x

Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.

x x x

The arresting officers in this case tendered no justification in court for their non-compliance with the procedures. Indeed, a thorough perusal of the records of this case yielded no result as to any explanation or justification tendered by the apprehending officers as regards their non-compliance with the procedures laid

down under Section 21, Article II of R.A. No. 9165. It was thus a grave error for the RTC and the CA to rule that there was an unbroken chain of custody despite the failure of the arresting officers to mark the confiscated plastic sachets in the presence of Valencia and to identify all the individuals who took custody of the same from the time the said plastic sachets were confiscated until the time they were presented in the RTC. [Emphasis supplied]

WHEREFORE, premises considered, the appeal is hereby GRANTED. The Judgment[40] dated February 28, 2011 of the Regional Trial Court, Branch 35, Calamba City is REVERSED and SET ASIDE. Accused-appellant Ferdinand Lopez y Henry is hereby ACQUITTED on the ground of reasonable doubt.

SO ORDERED.

Dimagiba, L. R., and [*]Sempio Diy, M.E., JJ., concur.

[*] Acting Junior Member per Office Order No. 15-15-ABR dated January 20, 2015.

[1] Penned by Acting Presiding Judge Rommel O. Baybay; Appendix “A” to the Appellant's Brief, Rollo, pp 70-76.

[2] Id., at p 76.

[3] Records, pp 1, 2.

[4] Ibid.

[5] Order dated October 25, 2006, Records, p 39; Certificate of Arraignment, Records, p 37.

[6] Also spelled as “Odelon”.

[7] TSN dated May 28, 2008; TSN dated September 9, 2009; TSN dated September 30, 2009.

[8] TSN dated August 12, 2009.

[9] Records, p 133.

[10] See Order dated September 9, 2009, Records, p 159.

[11] Also spelled as “Marck”.

[12] See Records, p 5.

[13] Records, pp 134-135.

[14] Records, p 133.

[15] See Resolution dated September 23, 2005, Records, pp 3-4.

[16] TSN dated July 2, 2010.

[17] TSN dated November 12, 2010.

[18] TSN dated July 2, 2010, p 7.

[19] Supra, at note 1.

[20] Id., pp 75-76.

[21] Rollo, p 57

[22] Valencia vs. People of the Philippines, G.R. No. 198804, January 22, 2014.

[23] People of the Philippines vs. Morate, G.R. No. 201156, January 29, 2014; People of the Philippines vs. Caranto, G.R. No. 193768, March 5, 2014.

[24] People of the Philippines vs. Caranto, G.R. No. 193768, March 5, 2014.

[25] People of the Philippines vs. Sabdula, G.R. No. 184758, April 21, 2014.

[26] Records, p 133.

[27] Records, p 5.

[28] Records, pp 134-135.

[29] TSN dated May 28, 2008, p 5.

[30] TSN dated September 9, 2009, pp 2-4.

[31] Records, p 7.

[32] G.R. No. 193768, March 5, 2014.

[33] Records, pp 134-135.

[34] Records, pp 134-135.

[35] See Order dated September 9, 2009, Records, p 159.

[36] Records, p 133.

[37] 576 Phil. 576 (2008) as cited in People of the Philippines, G.R. No. 203028, January 15, 2014.

[38] Valencia vs. People of the Philippines, G.R. No. 198804, January 22, 2014.

[39] G.R. No. 198804, January 22, 2014.

[40] Supra at note 1.

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