

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEXANDER UBATAN Y GALUDO @ “ALEX/PUKOL”,
ACCUSED-APPELLANT.**

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an appeal from the Decision dated May 30, 2013 of the Regional Trial Court of Bangui, Ilocos Norte, Branch 19, in Criminal Case No. 2077-19, the dispositive portion of which reads:

“WHEREFORE, the court finds the accused Alexander Ubatan GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and hereby imposes upon him the penalty of life imprisonment plus a fine of Five hundred thousand pesos [P500,000.00], and to pay the costs.

The methamphetamine hydrochloride subject of this case is hereby declared forfeited in favour of the government, to be destroyed in accordance with the aforesaid law. The clerk of court is directed to coordinate with the Philippine Drug Enforcement Agency for this purpose .

SO ORDERED.”[1]

The factual antecedents:

Alexander Ubatan y Galudo, also known as “Alex/Pukol” [herein accused-appellant] was charged with Violation of Section 5, Article II, of Republic Act No. 9165[2] in the Information dated May 4, 2012, the accusatory portion of which reads:

“That on or about 2:00 o'clock in the morning of May 3, 2012 in Barangay Pragata, Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly sell one heat sealed transparent plastic sachet containing methamphetamine hydrochloride, commonly known as 'shabu', a dangerous drug, weighing 0.0354 grams to poseur-buyer, PO1 Larrymel P. Andres, without the necessary license or authority from the appropriate government agency.

Contrary to law.”[3]

Upon arraignment, accused-appellant pleaded not guilty. Trial on the merits ensued.

During the trial, the prosecution presented as witnesses Police Senior Inspector Joseph Baltazar, Police Inspector Amely Ann Navarro, SPO1 Ruben Patricio, PO1 Larrymel Andres, and Jessie Saniata Langgaman. The prosecution's testimonial evidence was summarized by the court a quo, as follows:

“x x x at around 10:00 o'clock in the morning of May 3, 2012 while Police Chief Joseph Baltazar of the PNP Pasuquin, Ilocos Norte was in his office at the police station, he received information from a confidential informant regarding the rampant selling of illegal drugs being conducted at Brgy. Pragata, particularly at the house of accused Alexander Ubatan. This report was specifically relayed by the informant to one of his men,

PO1 Larrymel Andres. So, immediately they conducted a test buy at the house of the accused. SPO1 Caldito steered the test-buy. The result yielded positive as they were able to buy the stuff. For which reason, he coordinated with the PDEA, Ilocos Norte. With the police elements from the PDEA, they planned and conducted the buy-bust operation.

Police Officer Larrymel Andres will act as the poseur-buyer to be accompanied by the informant and the other police elements will position themselves strategically in the place of the transaction so they could give aid or assistance to PO1 Larrymel Andres in case he will relay to them the pre-arranged signal. The police poseur-buyer will buy P500.00 worth of shabu from the accused and thence marked the five pieces of one hundred peso bill wherein he placed his initial in the left collar on the picture of President Manuel Roxas. x x x The markings of the marked money were all done at the Police Station of Pasuquin.

After the briefing, the team on board two (2) vehicles and some motorcycles proceeded to the vicinity of the target area, which is near the house of the accused. The group arrived at the target area before 12:00 o'clock noon. PO1 Andres and the confidential agent who were on board a solo motorcycle proceeded to the house of the accused. Accused readily recognized the accused (sic) and he asked the informant why only at that time that he arrived. The informant replied, 'We came here to buy because my companion wanted to buy shabu.' They transacted for the price of P500.00. Accused asked for the payment, to which the police buyer gave the five (5) one hundred marked peso bills. He handed the consideration and accused placed the money in his pocket. In return, he brought out a cigarette pack wherein he picked a plastic sachet inside. He took the cigarette pack from the right pocket of his shorts and handed the same to the police poseur-buyer. After handling over the plastic sachet, PO1 Andres looked over it and noticed that it was a shabu, so he affected (sic) the pre-arranged signal. PO1 Andres relayed the pre-arranged signal, which is the grabbing of the hand of herein accused. They rushed towards the parties and aided PO1 Andres in the apprehension of accused. PO1 Andres was holding the hand of the accused while the latter was resisting.

x x x x x x x x

The recovered heat-sealed transparent plastic bag with the initial of PO1 Andres was referred to the PNP Crime Laboratory Office of the province based in Camp Juan, Laoag City for examination. Upon examination by Police Inspector Amiely Ann Navarro of the contents of the plastic bag marked specimen (LA3), she found that the same weighed 0.0354 gram and was tested positive for methamphetamine hydrochloride or 'shabu.'"[4]

Meanwhile, accused-appellant maintained his innocence and denied the accusations against him. He testified that at the time of the incident he was in his house with his lived-in partner, Nenita Directo, and Gerald Deuz. He averred that he was at the back portion of his house and was about to feed his piglets when PSI Baltazar, PO1 Garan, PO1 Llamelo, PO1 Caldito and SPO1 Patricio arrived and ran towards him. PO1 Garan handcuffed him and he was frisked. SPO1 Patricio entered the house and went inside the room of his mother where he took some freshly laundered clothes and placed them at the place where accused-appellant's mother was sewing. Thereafter, SPO1 Patricio went out, talked to someone using his cellphone and uttered, "you come now, we are already here." [5]

Accused-appellant denied that he was selling shabu and insisted that the plastic sachets were "planted" by the police. He also denied that the barangay officials were present during the incident as he was even calling for help. The defense likewise presented Nenita Directo who corroborated accused-appellant's testimony.

On May 30, 2013, the court a quo rendered the assailed Decision. Hence, this appeal by the accused-appellant raising the following assignment of errors:

"I.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY.

III.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

IV.

THE COURT A QUO GRAVELY ERRED IN NOT APPLYING THE 'FRUIT OF THE POISONOUS TREE' DOCTRINE WITH RESPECT TO THE ALLEGEDLY CONFISCATED SHABU.

V.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT ACCUSED-APPELLANT'S RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.

VI.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

VII.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.”[6]

The accused-appellant argues in his brief that the prosecution failed to prove his guilt beyond reasonable doubt. He argues that the court a quo erred in according credence to the improbable and inconsistent testimonies of the prosecution witnesses as to the length of time that lapsed during the alleged transaction; the distance of the police back up from accused-appellant's house; and the person who had custody of the evidence. Moreover, accused-appellant contends that the prosecution failed to establish the elements of drug pushing, as well as the chain of custody that would have shown that the sachet [marked as “LA3”] presented in court as evidence was the very same specimen allegedly sold by the accused-appellant to PO1 Andres. The police officers failed to comply with the procedure under Section 21 of RA 9165 since they failed to conduct an inventory at the place of arrest and the marking of the sachet was done at the police station. Further, accused-appellant questions the legality of his arrest.

We have carefully reviewed the records of this case and found that the court a quo had overlooked cogent facts and circumstances that would entitle the accused-appellant to an acquittal.

The time-honored rule is that the presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt.[7] Apropos, to secure a conviction of the accused charged with the illegal sale of dangerous drugs as defined and punished by Section 5, Article II of RA 9165, the State must establish the concurrence of the following elements, namely: (a) that the transaction or sale took place between the accused and the poseur buyer; and (b) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the corpus delicti.[8]

In the case at bar, to support the accusation that the accused-appellant sold a sachet of shabu to PO1 Andres, the prosecution presented PSI Baltazar, SPO1 Patricio, PO1 Andres and Jessie Langgaman. PSI Baltazar admitted

that he did not see the transaction[9] and at a distance of 40 meters, he only saw the accused-appellant and PO1 Andres talking at the porch[10] for about 30 minutes.[11] On the other hand, SPO1 Patricio claimed that he was with PSI Baltazar and that they were 20 meters away from accused-appellant's house[12] where he allegedly witnessed the exchange of money and the sachet of shabu. Meanwhile, PO1 Andres affirmed that the police backup was 40 meters away and that the transaction only took 5 minutes.[13] For his part, Jessie Langgaman claimed that he saw the alleged sale because they were just nearby when it happened.

However, as correctly pointed out by the accused-appellant, their testimonies are rife with inconsistencies. Firstly, PSI Baltazar and SPO1 Patricio are inconsistent as to their distance from accused-appellant's porch where the supposed transaction took place. PSI Baltazar and PO1 Andres both testified that the police backup was positioned at about 40 meters (131 feet) away while SPO1 Patricio claimed that they were about 20 meters (65 feet) away. This detail assumes utmost importance when it is taken into account that PSI Baltazar admitted that at the distance of 40 meters, he was not able to see the exchange between PO1 Andres and the accused-appellant.[14] He merely saw PO1 Andres grabbing the hand of the accused-appellant which was the pre-arranged signal of the buy-bust team. Secondly, while Jessie Langgaman claimed that he saw the alleged sale, PSI Baltazar and SPO1 Patricio were in unison in claiming that the barangay officials only arrived after the arrest of the accused-appellant.[15] It may be true that the prosecution presented PO1 Andres to testify as to the alleged sale, nonetheless, the prosecution utterly failed to establish with moral certainty the identity of the sachet allegedly sold by the accused-appellant to PO1 Andres.

In illegal sale of prohibited drugs, apart from showing that the elements of sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. Accordingly, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. Taking this into consideration, specific procedures relating to the seizure and custody of drugs have been laid down under Section 21 (a), paragraph 1 of Article II of RA 9165,[16] viz. – 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, 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.

In the instant case, the prosecution submitted photographs of the items recovered during the buy-bust operation, however, they do not show the sachet of shabu allegedly sold by the accused-appellant. In fact, the captions of the photographs merely state “[o]ne (1) plastic sachet near the hat of the subject person” and “[a] recovered one (1) transparent plastic sachet by Barangay Kagawad Margarita V. Breis x x x”.[17] These photographs refer to the sachet allegedly found inside the house and the sachet allegedly thrown by Gerald Deuz, respectively. The police officers also failed to physically inventory the sachet allegedly sold by the accused-appellant immediately after the alleged sale. The testimonies of the prosecution witnesses are also conflicting on this point. PSI Baltazar and SPO1 Patricio both testified that the inventory was done at the police station,[18] but PO1 Andres testified that the inventory was done at the accused-appellant's house.[19]

As a rule, non-compliance with the immediate inventory will not necessarily result in the acquittal of the accused, if the following conditions concur: (1) the non-compliance is on justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[20] In this particular case, PSI Baltazar testified that he decided that the inventory should be done at the police station because the accused-appellant was resisting and shouting. However, the photographs adduced in evidence by the prosecution negate his claim as they clearly showed that during the body search, the accused-appellant was merely sitting at the porch of his house.[21] Even on the assumption that the accused-appellant was resisting and shouting, the

failure to immediately conduct an inventory is not excusable considering that there were nine (9) police officers who conducted the buy-bust operation, the accused-appellant was already handcuffed and the barangay officials arrived shortly after the arrest. In fine, there was no justifiable ground for the failure of the police officers to conduct a physical inventory immediately after the alleged sale.

In the same manner, there was no justifiable ground for their failure to immediately mark the sachet allegedly sold by the accused-appellant giving rise to a nagging doubt as to the integrity and the evidentiary value of the sachet allegedly sold by the accused-appellant. On this score, the “chain of custody” ensures that unnecessary doubts concerning the identity of the evidence are removed.[22] Chain of custody means the duly recorded authorized movements and custody of seized drugs of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[23] Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused,[24] to wit:

“Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband[s] are immediately marked 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 criminal proceedings, obviating switching, 'planting', or contamination of evidence.”

In the present case, PO1 Andres testified that he only marked the sachet allegedly sold by the accused-appellant with “LA3” when they returned to the police station. By implication, the sachet remained unmarked while in transit from the accused-appellant's house to the police station. Since the sachet was unmarked, it is not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise.[25] Thus, the prosecution should have established who was in possession of the sachet while in transit. Notably, the testimonies of PO1 Andres and PSI Baltazar on this point are conflicting. Based on the testimony of PSI Baltazar, the sachet was in the possession of PO1 Andres[26] who, in turn, claimed that PO1 Llamelo took custody of the same.[27] However, the prosecution failed to present PO1 Llamelo to shed light on the matter. During the hearing, PO1 Andres testified that he could identify the sachet through the marking “LA3”.[28] Nonetheless, it should be pointed out that the marking was only done at the police station and there was no evidence that would support a finding that the sachet he marked at the police station was the very same sachet allegedly sold to him by the accused-appellant. In view of the foregoing, it is apparent that there was a failure to properly preserve the integrity and evidentiary value of the sachet to ensure the identity of the corpus delicti from the time of seizure to the time of presentation in court.

We cannot acquiesce to the court a quo's finding that the prosecution was able to establish the accused-appellant's culpability on the basis of the presumption that the police officers performed their duties regularly since there was no proof of improper motive on their part. It bears stressing 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-appellant 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.[29] In this particular case, the totality of the evidence presented by the prosecution failed to support accused-appellant's conviction for Violation of Section 5, Article II, RA 9165. Accordingly, the presumption of innocence should prevail and the accused-appellant must be acquitted on the ground of reasonable doubt. At this juncture, it is no longer necessary to discuss accused-appellant's argument as to the legality of his arrest.

WHEREFORE, the appeal is hereby GRANTED. The Decision dated May 30, 2013 of the Regional Trial Court of Bangui, Ilocos Norte, Branch 19, in Criminal Case No. 2077-19 is hereby REVERSED and SET ASIDE. Accused-appellant Alexander Ubatan y Galudo @ “Alex/Pukol” is ACQUITTED of the crime charged based on reasonable doubt and ordered immediately RELEASED from detention, unless he is confined for any other lawful cause/s.

The Director of the New Bilibid Prison is directed to submit his compliance within five (5) days from receipt hereof.

SO ORDERED.

Zalameda and Diy, JJ., concur.

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- [1] RTC Decision, p. 23; Records, p. 132; Rollo, p. 102.
- [2] The Comprehensive Dangerous Drugs Act of 2002.
- [3] Records, p. 1.
- [4] RTC Decision, pp. 2-4, Records, pp. 111-113.
- [5] TSN, p. 5, March 14, 2013.
- [6] Rollo, pp. 61-62.
- [7] People vs. Lorenzo, G.R. No. 184760, April 23, 2010.
- [8] People vs. Gonzales, G.R. No. 182417, April 3, 2013 citing People vs. Kamad, G.R. No. 174198, January 19, 2010
- [9] TSN, p. 14, July 2, 2012.
- [10] TSN, p. 8, July 2, 2012.
- [11] TSN, p. 11, July 2, 2012.
- [12] TSN, pp. 5-6, December 29, 2012.
- [13] TSN, pp. 8 and 10, July 30, 2012.
- [14] TSN, p. 14, July 2, 2012.
- [15] TSN, p. 18, July 2, 2012; p. 20, December 29, 2012.
- [16] People vs. Lorenzo, G.R. No. 184760, April 23, 2010.
- [17] Records, pp. 15-16
- [18] TSN, p. 16, July 2, 2012.
- [19] TSN, p. 12, July 30, 2012.
- [20] People vs. Umipang, G.R. No. 190321, April 25, 2012 citing People vs. De la Cruz, G.R. No. 177222, October 29, 2008.
- [21] Records, pp. 18 and 20.

[22] People vs. Lorenzo, G.R. No. 184760, April 23, 2010 citing Malillin vs. People, G.R. No. 172953, April 30, 2008.

[23] People vs. Climaco, G.R. No. 199403, June 13, 2012.

[24] People vs. Umipang, G.R. No. 190321, April 25, 2012 citing People vs. Coreche, G.R. No. 182528, August 14, 2009

[25] People vs. Magpayo, G.R. No. 187069, October 20, 2010 citing People vs. Robles, G.R. No. 177220, April 24, 2009.

[26] TSN, p. 18, July 2, 2012.

[27] TSN, p. 13, July 30, 2012.

[28] TSN, p. 3, September 10, 2012.

[29] People vs. Catalan, G.R. No. 189330, November 28, 2012.

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