

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RIO FAJARITO Y LANDRITO, ACCUSED-APPELLANT.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

For review is a Decision[1] that found the accused-appellant Rio Fajarito y Landrito (“Fajarito”) guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs under Republic Act 9165.[2] The decretal portion of which reads as follows:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused RIO FAJARITO y LANDRITO GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and is hereby sentenced to suffer imprisonment of TWELVE (12) YEARS, ONE (1) DAY as minimum to FOURTEEN (14) YEARS as maximum, and to pay a fine of P 300,000.00.

Cost against he accused.

SO ORDERED.”[3]

On 19 June 2007, an Information for Violation of Section 11[4] of Article II of Republic Act No. 9165, was filed against the accused-appellant Fajarito, the accusatory portion of which reads:

“That on or about June 15, 2007, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession and under her custody and control one (1) heat-sealed transparent plastic sachet containing zero point zero two two (0.022) grams of white crystalline substance containing methylamphetamine hydrochloride or shabu, a dangerous drug.

Contrary to law.”[5]

When arraigned, Fajarito pleaded “Not Guilty” to the charge.

During the pre-trial, the prosecution and defense stipulated that: (1) the court has jurisdiction over the person of the accused and the subject matter of the case; and (2) accused Rio Fajarito y Landrito is the same person identified in the Information.[6] Trial on the merits thereafter ensued.

The prosecution presented the following witnesses: (1) Police Senior Inspector Elisa Reyes (“PSI Reyes”), the Forensic Chemical Officer who conducted the laboratory examination on the subject specimen; (2) SPO1 Ricardo Manansala (“SPO1 Manansala”), the police officer who arrested the appellant; and (3) PO3 Elymar Garcia (“PO3 Garcia”), the designated Police Investigator in the case. The defense, on the other hand, presented accused-appellant Fajarito as its sole witness.

The testimony of PSI Reyes, however, was dispensed with after the parties stipulated that she is the same Forensic Chemist who conducted the laboratory examination on the specimen submitted to her on 15 June 2007; that based on her examination, she concluded that the subject specimen yielded positive results to Methylamphetamine

Hydrochloride, a dangerous drug; that said examination was reduced into writing on Chemical Report No. D-670-07;^[7] and that she had no personal knowledge as to the source of the specimen as well as to the circumstances surrounding the actual arrest of the Fajarito. The testimony of PO3 Garcia was also dispensed with after the parties stipulated that he was the designated Police Investigator of the case on 15 June 2007; that he took the statements of the witnesses concerned and prepared the following documents: the Joint Affidavit of Apprehension, Booking Sheet and Arrest Report, and the Referral-Letter for Inquest; and that he had no personal knowledge as to the arrest and recovery of the subject confiscated items.

The prosecution presented a simple narration of facts of the case. According to the prosecution, at around 1:00 o'clock in the afternoon of 15 June 2007, SPO1 Manansala and PO2 Federico Casuple, members of the Anti-Crime Unit of Police Station No. 2, Manila Police District, were conducting an anti-criminality patrol along St. Peter Street, Tondo, Manila, when they saw a young lady, later identified to be appellant Fajarito, approaching their direction and holding a small plastic sachet containing a white crystalline substance. Upon seeing them, Fajarito tossed away the plastic sachet, prompting SPO1 Manansala to pick it up. The latter asked Fajarito why she was carrying the said plastic sachet to which she did not give any answer.

SPO1 Manansala then informed Fajarito of the nature of her offense and was apprised of her constitutional rights. Fajarito was later brought to Police Station No. 2 in Moriones, Tondo, Manila.

At the police station SPO1 Manansala marked the plastic sachet with the initials "SAID" and turned it over to police investigator PO3 Garcia, who, in turn, prepared the request for laboratory examination and brought the seized item to the PNP-MPD Crime Laboratory.

In the Chemistry Report No. D-670-07, prepared by Forensic Chemist PCI Reyes, the contents of the heat-sealed plastic sachet marked with the the initials "SAID" yielded positive for methylamphetamine hydrochloride, a dangerous drug.

The defense, on the other hand, presented a different version of the facts. Fajarito claimed that on 15 June 2007, after leaving her child in school, she went to a video game shop, in front of her neighbor's house, at St. Peter Street in Tondo, Manila. While sitting by herself in front of the video game shop, a man wearing a yellow polo shirt and khaki pants suddenly approached her and told her, "diyan ka lang wag kang gagalaw." When she asked the man, "bakit po?", the latter did not reply and instead, asked her to stand up. When she stood up, she again asked the man, "bakit po?", but the latter did not answer her and this time, he ordered her to empty her pockets. After showing to the man her wallet containing P 40.00 consisting of two (2) pieces of twenty peso bill, the latter forced her to go with him to the precinct. She resisted and told him, "bakit po ako sasama, wala po akong alam." The man then grabbed her wrist and whispered to her that it was for investigation purposes but when she asked him what kind of investigation, the latter did not reply.

Fajarito claimed that she did not shout for help because during that time, there were no other persons in the area; that she and the man walked for about five (5) minutes, and then they rode in a tricycle to Police Station 2; that when they arrived at the police station, she was brought inside the cell and then the man who arrested her ordered a female detainee inside the cell to frisk her; that the female detainee said negative; that she stayed in the police station for 7 to 8 days; that she only learned at the police station that the man who apprehended her on 15 June 2007 along St. Peter Street, Tondo, Manila went by the name SPO1 Ricardo Manansala; that SPO1 Manansala charged her with violation of Section 11; that she does not have any grudge against SPO1 Manansala; and that she could not think of any reason why SPO1 Manansala would tell a lie against her because she did not know him prior to his arrest.

The court a quo rendered the assailed decision which found Fajarito guilty beyond reasonable doubt of the crime

of violation of Section 11, Article 2 of R.A. 9165. The trial court gave full faith and credit to the evidence of the prosecution and upheld the presumption of regularity in the performance of duties of the police officers.

Invoking her innocence, Fajarito appeals her conviction before the Court and seeks her acquittal by raising the lone assignment of error:

“THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED, AS THE PROSECUTION FAILED TO OVERTHROW HER CONSTITUTIONAL PRESUMPTION OF INNOCENCE.”

Fajarito's appeal has merit.

In the prosecution for illegal possession of dangerous drugs, the following elements must be duly established: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[8]

Similar to illegal sale, in illegal possession of dangerous drugs, the prosecution must show the chain of custody over the dangerous drug in order to establish the corpus delicti, which is the dangerous drug itself. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the corpus delicti – the body of the crime whose core is the confiscated illicit drug.[9] Thus, every fact necessary to constitute the crime must be established.

To be able to identify the dangerous drug and effectively prove the corpus delicti, Section 21 of Republic Act No. 9165 and Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 (IRR) define the procedures to be followed by the apprehending officers in the seizure and custody of the dangerous drugs.

Section 21 of Republic Act No. 9165 relevantly provides:

“Section 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 (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;”

Similarly, Section 21(a), IRR of Republic Act No. 9165 pertinently states:

“(a) The apprehending office/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;”

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs, controlled chemicals, plant sources of dangerous drugs or paraphernalia at each stage, from the time of seizure/confiscation to receipt by 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 transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[10]

The chain of custody rule comes into play as a mode of authenticating the seized illegal drug as evidence. It includes testimony about every link in the chain, from the moment the object seized was picked up to the time it is 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 witness’ possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same 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. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.[11]

From the foregoing, it may be gleaned that to establish the chain of custody in a buy-bust operation the steps are as follows: 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, seized illegal drug from the forensic chemist to the court.[12]

The first link in the chain of custody starts with the seizure from Fajarito of the heat-sealed sachet containing the suspected shabu and its markings. The rule requires that the marking of the seized item should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that it is the same item that enters the chain and is eventually the one offered in evidence.[13] Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimen 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 at the end of criminal proceedings, obviating switching, “planting,” or contamination of evidence.[14]

In the case at hand, the evidence presented by the prosecution revealed that it was SPO1 Manansala who picked up the subject one (1) heat-sealed sachet of shabu after he saw Fajarito toss it away when the latter saw him approaching her.[15] After the arrest of Fajarito, the confiscated sachet was brought to the police station where SPO1 Manansala marked the plastic sachet with the initials “SAID”.[16] The testimony of SPO1 Manansala, however, failed to indicate whether or not the marking was done in the presence of Fajarito. Further, no other witnesses testified on the supposed markings.

Fajarito points out that the marking “SAID” does not reflect the initials of any police officer but the acronym of a police station, “Station Anti-Illegal Drugs”; and that the marking was not done with the intention of complying with the provisions of R.A. No. 9165, but only in order to fully endorse the investigation concerning the said confiscated item to the section of the police station having proper jurisdiction over the nature of the case. We, however, find no basis for such conclusion. The rule on marking of evidence does not require any specific format for the “mark” as long as the integrity and evidentiary value of the evidence is preserved, as to dispel unnecessary doubts as to the identity of the evidence. As long as the marked, confiscated item can be separated from the

corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed at the end of criminal proceedings, we find that there is substantial compliance with the particular segment of the chain of custody rule under the law.

The second link in the chain is the handling of the seized shabu sachet by the arresting officer, SPO1 Manansala from the place of arrest and confiscation to the hands of the investigating officer. According to SPO1 Manansala, he turned over the confiscated plastic sachet to the investigator.[17] It should be recalled that while the parties entered into a stipulation that PO3 Elymar Garcia was the designated Police Investigator of the case, the latter, however, had no personal knowledge as to the arrest and recovery of the subject confiscated items from Fajarito.

The third link, which describes the transfer by the investigating officer of the illegal drug to the forensic chemist for examination, was also shown to be flawed. Because the testimony of PO3 Garcia was dispensed with, the prosecution thus failed to establish the fact of transfer of the subject confiscated item from PO3 Garcia to the Forensic Chemist. As argued by the appellant, the Letter-Request for Laboratory Examination only reveals that the said request was delivered by a certain "PO2 Garcia" to the forensic chemist, PSI Reyes. It can also be found from the letter-request that it was a certain Police Inspector Arnulfo Gempesao Ibanez ("PI Ibanez") who signed the same which leaves a doubt to whether or not PI Ibanez, at some point, took control and custody of the subject confiscated item before it was turned over by a certain PO2 Garcia to PSI Reyes.

As for the fourth and last link in the chain of custody, there was nothing in the records that supported such fact of turnover and submission of the marked confiscated shabu sachet from the forensic chemist to the court.

What merely appears on record is the fact of appearance of the chemist and that "she brought along the subject specimen contained in a small brown envelope." [18] Who received the specimen in court and how it later came out during the testimony of SPO1 Manansala is not all explained.

The above-discussed discrepancies and gaps in the chain of custody of the essential evidence consequently affect the proof of the corpus delicti. They create reasonable doubt as to the identity of the seized item and necessarily its evidentiary value. Consequently, the prosecution failed to fully prove the elements of the crime charged, creating reasonable doubt about the appellant's criminal liability.

Anent the requirements of inventory and taking of photograph of the seized shabu item in the presence of appellant Fajarito, among others, as stated in Section 21, the same were not shown to have been observed. As correctly pointed out by Fajarito, the prosecution offered no valid grounds or reasons that would justify the non-compliance by the arresting officer of the procedures laid down in Section 21. Non-compliance with the above-quoted requirements does not of course necessarily render void and invalid the seizure of the dangerous drugs, provided that there are justifiable grounds to warrant exception therefrom. The prosecution must, therefore, explain the reasons behind the procedural lapses and must show that the integrity and value of the seized evidence had been preserved.[19] In this case, however, no justifiable ground had been proffered and it is apparent that there was a failure to properly preserve the integrity and evidentiary value of the seized items to ensure the identity of the corpus delicti from the time of seizure to the time of presentation in court.

While SPO1 Manansala testified that he had knowledge that PO3 Garcia took the photograph of Fajarito and the subject specimen, no photograph was presented or offered during trial.[20] It was likewise admitted by SPO1 Manansala, in his testimony, that he cannot remember whether or not the presence of a Barangay Official or any elected public official who is required to sign the copies of the inventory and be given a copy thereof, was observed.[21]

Because the prosecution failed to establish the element of corpus delicti with the prescribed degree of proof

required for the successful prosecution of illegal possession of dangerous drugs under R.A. No. 9165, we are compelled to reverse the judgment of conviction and acquit accused-appellant.

The constitutional mandate that affords every citizen the right to be presumed innocent in any criminal proceeding until the contrary is proven is not mere verbiage that courts may lightly consider.

WHEREFORE, the appeal is GRANTED. The assailed decision is REVERSED and SET ASIDE. Accused-appellant RIO FAJARITO y LANDRITO is ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt. Her immediate RELEASE from detention is hereby ordered, unless she be detained for any other lawful cause.

The Division Clerk of Court is directed to cause the implementation forthwith of the herein decision.

IT IS SO ORDERED.

Salazar-Fernando (Chairperson) and Barrios,[*] JJ., concur.

[*]Actg. Third Member vice J. Gaerlan per Office Order No. 270-14-RSF dated 06 June 2014.

[1]Written by Judge Reynaldo A. Alhambra of Branch 53, Regional Trial Court of Manila in Criminal Case No. 07-253817 dated 06 September 2011; Records, pp. 73-75.

[2] Entitled as "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, repealing Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, providing funds therefor, and for other purposes."

[3] Records, p. 75.

[4] SECTION 11. Possession of Dangerous Drugs. — The penalty of xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[5] Records, p. 1.

[6] Records, p. 24.

[7] Ibid, p. 54.

[8] Valencia v. People, G.R. No. 198804, 22 January 2014; People v. Secreto, G.R. No. 198115, 27 February 2013, 692 SCRA 298; People v. Enriquez, G.R. No. 197550, 25 September 2013; People v. Ng Yik Bun, G.R. No. 180452, January 10, 2011, 639 SCRA 88.

[9] People v. Beran, G.R. No. G.R. No. 203028, January 15, 2014.

- [10] Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165.
- [11] *Lopez v. People*, G.R. No. 188653, 29 January 2014; *People v. Capuno*, *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233.
- [12] *People v. Enriquez*, *supra* at footnote 8.
- [13] *Lopez v. People*, *supra* at footnote 11, citing *People v. Sached*, G.R. No. 175832, 15 October 2008, 569 SCRA 194.
- [14] *People v. Constantino*, G.R. No. 199689, March 12, 2014, citing *People v. Zacaria*, G.R. No. 181042, November 26, 2012, 686 SCRA 390.
- [15] TSN dated 20 January 2009, p. 4.
- [16] *Ibid*.
- [17] TSN dated 20 January 2009, p. 5.
- [18] Records, p. 37.
- [19] *People v. Gadiana*, G.R. NO. 184761, September 8, 2010, 630 SCRA 425 ; *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791.
- [20] TSN dated 20 January 2009, p. 9.
- [21] *Ibid*, pp. 9-10.

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