

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ELMER
LIWANAG Y TUAZON ALIAS "KUTIL",
ACCUSED-APPELLANT.**

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

This is an appeal from the Decision^[1] dated December 13, 2012, of the Regional Trial Court (RTC), Branch 57, Angeles City, Pampanga, in Criminal Case Nos. DC 04-246 and 04-247, finding herein accused Elmer Liwanag y Tuazon guilty beyond reasonable doubt of the offenses charged and sentencing him to suffer life imprisonment and a fine of P500,000.00 for violation of Section 5 of Republic Act (RA) No. 9165 and imprisonment for 12 years and 1 day to 14 years and a fine of P300,000.00 for violation of Section 11 of RA No. 9165.

The instant case arose from an Information dated August 24, 2004, the accusatory portion of which reads, as follows:^[2]

That on or about the 23rd day of August, 2004, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control four (4) pieces of small size heat-sealed transparent plastic sachets containing more or less TWO TENTHS (0.2) OF A GRAM OF SHABU (Methamphetamine Hydrochloride) each or a total of EIGHT TENTHS (0.8) OF A GRAM OF SHABU (Methamphetamine Hydrochloride), which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.

During the arraignment, accused-appellant pleaded not guilty to the crimes charged.^[3] After pre-trial conference, during which only the identity of accused-appellant was admitted^[4], trial on the merits of the case ensued.

The prosecution initially intended to present two witnesses. The first witness was PO2 Victorino Chua, the police officer who served as the poseur-buyer in the buy bust operation which allegedly resulted in the arrest of accused-appellant. However, his entire testimony was later ordered stricken off the record due to his continued failure to appear in court for cross-examination^[5] despite an order^[6] from the court a quo to explain why he should not be cited for contempt of court and a subsequent warrant of arrest^[7] be issued against him.

The next and sole remaining witness for the prosecution was PO1 Allan Tongol who testified that, at the time the buy-bust operation was conducted, he was assigned as an intel-operative at the City Drug Enforcement Unit, ACPO, Angeles City, whose function was to conduct surveillance and monitoring against lawless elements and to conduct possible buy-bust operations. On August 23, 2004, the chief of police, on the basis of reports from a civilian asset concerning a certain "Kutil" who was allegedly engaged in illegal drug trading, ordered the conduct of a buybust operation.^[8] Thus, PO2 Chua was assigned as the poseur-buyer, with the other operatives acting as back-up. PO2 Chua was provided with two P100.00 bills, which he marked in front of the other operatives with an "x" on Pres. Manuel Roxas' face.^[9] Thereafter, PO1 Tongol, together with PO2 Chua, Officer Pizares, the civilian asset and a media representative, proceeded to R.D. Reyes St., Sitio Tibagin, where the civilian asset

pointed to a certain Kutil who was in front of his residence at that time. PO2 Chua and the civilian asset then alighted from the vehicle and approached the alleged Kutil, while PO1 Tongol remained inside the vehicle, which was parked about 40 to 50 meters from accused-appellant.[10] PO1 Tongol and the remaining operatives watched an exchange of something between accused-appellant and PO2 Chua, after which they saw PO2 Chua reverse his bullcap, the pre-arranged signal that the deal had been completed.[11] PO1 Tongol and the others then rushed to the scene, however, accused-appellant was able to run and the operatives had to chase him into his house. After catching accused-appellant, PO1 Tongol recovered the marked money, along with five (5) pieces of disposable lighters which they found inside the house. Four (4) other plastic sachets allegedly containing shabu were recovered from accused-appellant's pocket.[12] They then brought accused-appellant to their office to be charged accordingly. They also prepared the affidavit of apprehension[13], custodial investigation report[14], certification of field test[15], request for technical analysis and confiscation receipt.

With respect to the supposed testimony of the forensic chemist, the parties stipulated on the following facts: (1) That Divina Mallari Dizon is a forensic chemical officer employed at the PNP Crime lab, Camp Olivas, City of San Fernando, Pampanga; (2) That in the course of her employment, she received a request for laboratory examination; (3) That in response to said request, she conducted an examination on the substance submitted and the result of the same was reduced into writing as evidenced by Chemistry Report No. D-244-2004; (4) That after examining the evidence submitted, the examination gave positive result for the presence of methamphetamine hydrochloride; (5) That the witness personally examined the substance, prepared the Chemistry Report, signed and then referred the same to her superior for approval; and (6) That the forensic chemist does not know from whom and where the substance was taken.[16]

On the other hand, the defense presented its sole witness, accused-appellant himself. Accused-appellant testified that, on August 23, 2004, at around 3:00 o'clock in the afternoon, he was sleeping at his house at Sta. Trinidad, Tibagin, Angeles City, when two police officers suddenly entered his house, allegedly looking for accused-appellant's uncle, Rudy Liwanag, who was not residing in said house. Without introducing themselves, they entered the house and proceeded to search, but found nothing inside. When they could not locate Rudy, they told accused-appellant to go with them for further questioning and brought him to a safe house at the Drug Enforcement Unit and left him there.[17] He only found out about the charges against him when he was brought for inquest proceedings.[18]

During cross-examination, accused-appellant further testified that PO2 Chua and PO1 Tongol were the ones who entered his house and arrested him on August 23, 2004, and that they were in civilian clothes at that time. Contrary to his direct testimony, accused-appellant said he knew that they were police officers since they introduced themselves as such.[19] In addition, accused-appellant averred that PO2 Chua and PO1 Tongol continued searching his house despite the fact that he already told them that his uncle was not around. Thereafter, he was forcibly taken by the police officers, purportedly to locate his uncle. However, he never filed any case against the police officers for his alleged illegal arrest.[20]

On December 13, 2012, the RTC rendered its assailed Decision, finding accused-appellant guilty beyond reasonable doubt of the charges against him, as follows:[21]

WHEREFORE, the prosecution having established its case against the accused and having proven the guilt of the accused beyond reasonable doubt, the Court hereby finds ELMER LIWANAG Y TUAZON GUILTY beyond reasonable doubt of the crime as alleged in the Information and hereby sentences him to suffer the penalty LIFE IMPRISONMENT in Criminal case no. DC 04-247 for violation of section 5, R.A. 9165 and a fine of Php500,000.00.

Accused ELMER LIWANAG Y TUAZON is also sentenced to suffer the penalty of imprisonment of

TWELVE YEARS and ONE DAY as minimum to FOURTEEN YEARS as maximum of Reclusion Temporal and a fine of Php300,000.00 for violation of section 11 in criminal case no. DC-04-246 of R.A. 9165.

SO ORDERED.

Aggrieved, accused-appellant appealed to this Court, raising the following assignment of errors:[22]

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE ILLEGALITY OF HIS ARREST AND THE INADMISSIBILITY OF THE ALLEGEDLY CONFISCATED SACHETS OF SHABU;

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUGS; [and]

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165.

We find merit in the instant appeal.

With respect to the first assignment of error, suffice it to state that accused-appellant himself acknowledged that he never objected to any irregularity in his arrest prior to his arraignment. Thus, accused-appellant is deemed to have voluntarily submitted himself to the jurisdiction of the trial court and to have waived his right to question the validity of his arrest, thus curing whatever defect that may have attended his arrest.[23]

On the other hand, the validity of the warrantless arrest becomes relevant with respect to the issue on the admissibility of the illegal drug allegedly confiscated as a result therefrom. Section 5, Rule 113 of the Rules of Court provides the circumstances under which a warrantless arrest is allowed, viz:

Sec. 5. Arrest without a warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x x x x x x

In the instant case, accused-appellant's arrest falls under Section 5(a) of Rule 113, since his arrest was a product of a buy-bust operation where he was allegedly caught in the act of selling shabu to PO2 Chua. Thus, the arrest was valid and the confiscated drug, being a result of a search subsequent or simultaneous to said arrest, is admissible in court.

However, we find merit in accused-appellant's position that the prosecution failed to substantially comply with the

procedural requirements under Section 21 of the Implementing Rules and Regulations (IRR) of RA No. 9165. It is an oft-repeated rule in illegal drugs cases that the prosecution must be able to sufficiently establish the chain of custody of the seized drug from the time of its seizure up to the time of its presentation in court, in order to prove the continued identity and integrity of the seized illegal drug. In *Lopez vs. People of the Philippines*, the Supreme Court held, as follows:[24]

In the prosecution of drug cases, it is of paramount importance that the existence of the drug, the corpus delicti of the crime, be established beyond doubt. To successfully prosecute a case involving illegal drugs, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-petitioner.

In both cases of illegal sale and 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. 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 item was picked up to the time it is offered in 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. Indeed, 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. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence and on allegations of robbery or theft.

In the same case, the Supreme Court specified the links which must be established in the chain of custody in a buy-bust situation, namely: (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.[25]"A substantial gap in the chain of custody renders the identity and integrity of the corpus delicti dubious.[26]"

In the instant case, PO2 Chua's entire testimony had been ordered stricken off the record due to his failure to appear in court for cross-examination. Thus, the prosecution's case depends entirely on the sufficiency or insufficiency of PO1 Tongol's testimony. However, a close review of the transcripts of stenographic notes (TSN) will reveal several gaps in the chain of custody, which would create reasonable doubt with respect to the identity and continued integrity of the corpus delicti.

First, PO1 Tongol, the prosecution's sole remaining witness, failed to even testify on the fact that the confiscated plastic sachets of shabu and the disposable lighters had been marked after seizure, much less who marked them and when. PO1 Tongol merely testified that he recognized the plastic sachets presented in court as those recovered from the pocket of the accused due to the markings on them, without clarifying who affixed the markings thereon and when they were affixed. In *Valencia vs. People of the Philippines*, the Supreme Court explained the importance of the requirement of marking of the seized items, to wit:[27]

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. In *People v. Gonzales*[28], the Court explained that:

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.

X X 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 justifiable ground for the noncompliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the noncompliance 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.

To reiterate, PO1 Tongol never testified on who marked the seized drug and other related items, and when they were marked. Neither did PO1 Tongol state that the marking was done in the presence of accused-appellant or his representative. Contrary to the prosecution's stand in the Appellee's Brief, documentary evidence such as the Certification of Field Test and Request for Laboratory Exam cannot be relied upon as a substitute for the missing witness testimony since said documents do not even indicate who affixed the markings and when, or whether said markings were witnessed by accused-appellant or his representative.

Second, the prosecution's witness also failed to establish the turnover of the seized drug and other related items from the custody of the apprehending officer or poseur-buyer to the investigating officer or the next officer who handled the seized items. As admitted by PO1 Tongol himself, it was PO2 Chua who was assigned as the poseur-buyer and who, along with the civilian asset, approached and transacted with accused-appellant.

On the other hand, PO1 Tongol was merely one of the back-up operatives who remained in the vehicle, about 40 to 50 meters away from the transaction, waiting for PO2 Chua's signal. Thus, it was PO2 Chua who was first in custody of at least the plastic sachet of shabu which was allegedly sold to him by accused-appellant. However, PO1 Tongol testified that it was he who kept all seized items without explaining how they were transferred to his possession or how PO1 Tongol could be certain that the sachet found in PO2 Chua's possession was the same item sold to him by accused-appellant, as can be seen from his direct examination, to wit:[29]

Q

Who actually recovered the marked money?

A

It was me, sir.

Q

What else did you recover from him?

A

We recovered five (5) pieces of disposable lighters inside his house, sir.

xxx xxx xxx

Q

How about the substance subject matter of the deal between PO2 Chua and the accused, what happened to that substance?

A

It was with PO2 Chua, sir.

xxx xxx xxx

Q

When PO2 Chua recovered this plastic sachet, who held this until the time you reached your office?

A

I was the one, sir.

Q

What about the other 4 plastic sachets, from the time you recovered them up to the time you reached your office, who is in custody of the same?

A

Me also, sir.

Q

Where did you put these 4 plastic sachets at the time you were traveling from the scene up to your office?

A

At my pocket, sir.

Q

What pocket?

A

On the right pocket of my pants, sir.

Q

How about this one plastic sachet, where did you put this at the time you were traveling from the scene up to you (sic) office?

A

Inside my wallet, sir.

Moreover, as previously stated, PO2 Chua's testimony had been stricken off the record, thus, there is also nothing to corroborate PO1 Tongol's testimony that he was the one in custody of all seized items from the time of seizure up to their arrival at the office.

Third, the prosecution failed to establish the turnover of the seized drugs to the forensic chemist for laboratory examination. As a matter of fact, PO1 Tongol failed to testify as to who had custody of the illegal drugs upon their arrival at the DEU office, much less who eventually turned over the same to the crime laboratory. The Request for Laboratory Examination was signed by the Police Chief Inspector Eufemio De Guia Espino, but neither he nor PO1 Tongol ever testified as to how the seized drugs were transferred from the latter's possession to that of the former. PO1 Tongol merely stated that Police Chief Inspector Espino signed the document since he was their official, without clarifying who actually turned over the seized drugs to the crime laboratory. Neither was Police Chief Inspector Espino presented to identify the Request for Laboratory Examination and his signature.

Fourth, the prosecution failed to establish the condition and continued integrity of the seized drugs while in the custody of the crime laboratory. The prosecution cannot rely on the stipulations made as to the testimony of the forensic chemist to fill the gaps in the chain of custody of the seized drugs during that period. On the contrary, the stipulations were limited to the following facts: that the forensic chemist, Divina Mallari Dizon, received a request for laboratory examination; that she conducted an examination on the substance submitted and that the results of the same were reduced into writing as evidenced by Chemistry Report No. D-244- 2004; that the examination gave a positive result for methamphetamine hydrochloride; and that the forensic chemist personally examined the substance, prepared the Chemistry Report, signed and then referred the same to her superior for approval. On the other hand, the stipulations do not include the facts that the specimens which were examined by the forensic chemist are the same as those actually seized from accused-appellant or even that said specimens were submitted to the forensic chemist by PO1 Tongol, the last known handler of the seized drugs. However, both parties admitted that the forensic chemist did not know from whom and from where the substance examined had been taken.

As a final note, while it is true that accused-appellant's defense consisted mainly of denials and that jurisprudence finds such defense, without substantiating proof, to be weak defense, it is also an oft-repeated principle in criminal law that the evidence for the prosecution must stand or fail on its own weight and cannot be allowed to draw strength from the weakness of the defense.[30] In this case, the substantial gaps in the chain of custody of the seized drugs and other related items are clear and the prosecution failed to prove their identity and continued integrity from the time of seizure up to the time of presentation in court.

Considering the foregoing disquisition, we find reversible error in the finding of the court a quo that accused-appellant is guilty beyond reasonable doubt of the crimes charged.

WHEREFORE, the instant appeal is GRANTED. The Decision dated December 13, 2012, of the Regional Trial Court, Branch 57, Angeles City, Pampanga, in Criminal Cases Nos. DC 04-246 and 04-247 is REVERSED and SET ASIDE. Accused-appellant Elmer Liwanag y Tuazon is ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately RELEASED from detention, unless he is being detained for some other lawful cause.

The Director of the Bureau of Corrections is DIRECTED to IMPLEMENT this Decision and to report to this Court the action taken hereon within five (5) days from receipt thereof.

SO ORDERED.

Barza and Cruz, JJ., concur.

[1] Penned by Judge Omar T. Viola; Rollo, pp. 41-48.

[2] Records, p. 1.

[3] Id. at 19.

[4] See Note 1 at 42.

[5] Records, p. 52.

[6] Id. at 50.

[7] Id. at 53.

[8] Transcript of Stenographic Notes (TSN), May 13, 2008, pp. 3, 4-5.

[9] Id. at 5.

[10] Id. at 6-7.

[11] Id. at 8.

[12] Id. at 8-11.

[13] Records, p. 4.

[14] Id. at 8.

[15] Id. at 6.

[16] TSN, May 13, 2008, pp. 15-17.

[17] TSN, January 20, 2011, pp. 2, 3-5.

[18] TSN, February 24, 2011, pp. 2, 3.

[19] TSN, September 25, 2012, pp. 3, 4.

[20] Id. at 4-5.

[21] See Note 1 at 48.

[22] Rollo, p. 18.

[23] See *People vs. Racho*, 626 SCRA 633, 640-641 (2010).

[24] G.R. No. 188653, January 29, 2014, citing *People vs. Denoman*, 596 SCRA 257, 267 and other related cases.

[25] *Id.*, citing *People vs. Kamad*, 610 SCRA 295.

[26] *Ibid.*

[27] G.R. No. 198804, January 22, 2014, citing *People vs. Coreche*, 596 SCRA 350, 357 and other related cases.

[28] 695 SCRA 123.

[29] TSN, May 13, 2008, pp. 8-12.

[30] *People vs. Pepino-Consulta*, G.R. No. 191071, August 28, 2013, citing *People vs. De Guzman*, 616 SCRA 652, 669.

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