

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIAM DASALLA AND LORELIE RABAGO, ACCUSED, WILLIAM DASALLA, ACCUSED-APPELLANT.

Ponente: CORALES, J.

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CORALES, J.:

This is an appeal[1] from the February 12, 2010 Decision[2] and April 11, 2011 Order[3] of the Regional Trial Court (RTC), Branch 25, Tagudin, Ilocos Sur in Criminal Case Nos. 849-T and 850-T entitled “People of the Philippines v. William Dasalla & Lorelie Rabago”. The February 12, 2010 Decision found accused-appellant William Dasalla (Dasalla) guilty of illegal possession of prohibited drugs under Section 11, Article 2 of Republic Act No. 9165 (R.A. No. 9165), or the Comprehensive Dangerous Drugs Act of 2002, but acquitted accused Lorelie Rabago (Rabago) of the said offense. The April 11, 2011 Order denied Dasalla's motion for reconsideration.

The Antecedents

In Criminal Case No. 849-T, Dasalla was charged with illegal sale of dangerous drugs under an Information[4] which reads:

The undersigned 2[nd] Assistant Provincial Prosecutor accused William Dasalla of the crime of Violation of Section 5 of Republic Act No. 9165, otherwise known as the “Comprehensive Drugs Act of 2002, committed as follows:

That on or about the 10[th] day of January, 2005 in the municipality of Tagudin, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur-buyer methamphetamine hydrochloride, otherwise known as “Shabu”, a dangerous drug, with a total quantity of Four and Forty Six Hundredths (4.46) grams.

Contrary to law.

Rabago was separately charged with illegal possession of drugs under an Information, subsequently docketed as Criminal Case No. 850-T, which states:

That on or about the 10[th] day of January, 2005 in the municipality of Tagudin, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously have in her possession, control and custody 0.26, 0.31 and 0.09 grams of Methamphetamine Hydrochloride, otherwise known as “Shabu”, a dangerous drugs [sic].[5]

Upon arraignment, both accused pleaded not guilty to the respective crimes charged against them.[6] Joint trial ensued and the prosecution presented the following witnesses: Augustus D' Vince Castro (Castro), the informant; Senior Police Inspector Reynaldo L. Lizardo (SPI Lizardo), the poseur-buyer; PO1 Arman Bautista (PO1

Bautista), the back-up arresting officer; and Police Inspector Valeriano Panem Laya II (PI Laya II) of the Forensic Chemical Office of the Philippine National Police (PNP) Crime Laboratory in San Fernando City, La Union. On the other hand, accused Dasalla and Rabago testified in their defense.

The Prosecution's Version

Upon the information given by Castro through telephone that Dasalla would be delivering shabu in his house in Tagudin, Ilocos Sur on January 10, 2005,[7] SPI Lizardo and PO1 Bautista immediately proceeded to Castro's house[8] and conducted a short briefing on how the arrest would be effected. SPI Lizardo would be introduced by Castro to Dasalla as the buyer from La Union while PO1 Bautista would hide inside one of the rooms in Castro's house and await for SPI Lizardo's pre-arranged signal, "PDEA kami." [9]

Around 2:20 p.m., Dasalla arrived accompanied by Rabago. Castro escorted them to the living room of his house and introduced SPI Lizardo to Dasalla as a shabu buyer from La Union. Dasalla shook SPI Lizardo's hand and produced two (2) plastic sachets containing white crystalline substance. Dasalla pegged the price of the bigger sachet at P20,000.00 and the smaller one at P4,000.00. Thereafter, SPI Lizardo said "PDEA kami" and on cue, PO1 Bautista emerged from his hiding place to arrest Dasalla.[10]

Rabago tried to run but SPI Lizardo caught up with her. SPI Lizardo asked her to bring out the contents of her pocket which turned out to be three (3) small plastic sachets with white crystalline substance.[11]

After the arrest, SPI Lizardo and PO1 Bautista brought the accused and the allegedly confiscated items to the PDEA Regional Office in Camp Diego Silang, Carlatan, San Fernando City, La Union (PDEA Regional Office). Throughout the travel, PO1 Bautista handled the seized items.[12] Inventory of the seized items was done at PDEA Regional Office[13] where SPI Lizardo marked the five (5) sachets with "RLL" representing his initials.[14] At around 12:25 in the morning of January 11, 2005, PO1 Bautista delivered the suspected five (5) sachets of shabu to the Philippine National Police (PNP) Regional Crime Laboratory Office and the same were received by PO1 Bucasas.[15]

Based on the forensic examination of PI Laya II, the five (5) sachets of white crystalline substance respectively weighed as follows: A1-3.80 grams, A2-0.66 gram, A3-0.26 gram, A4-0.31 gram, and A5-0.09 gram. All the specimen tested positive for the presence of methamphetamine hydrochloride or shabu.[16] After the examination, PI Laya II prepared Chemistry Report No. D-002-05[17] and surrendered the remaining specimen to the evidence custodian. He then took the same specimen from the evidence custodian when he was called to testify in court.[18]

When SPI Lizardo testified, he admitted that the sale of shabu was not consummated. He identified the recovered items through their sizes: the two (2) bigger sachets were from Dasalla while the three (3) smaller sachets were from Rabago.[19] He added that a representative from Bombo Radyo and a Barangay Kagawad of San Fernando, La Union[20] were present during the inventory but there was no witness from the Department of Justice because it was already late in the evening. SPI Lizardo could not also produce the photographs taken during the inventory of the seized items.[21]

The Appellant's Version

Both Dasalla and Rabago invoked the defense of denial. According to them, at around noon of January 10, 2005, Dasalla received a text message from Castro inviting them to the latter's house in Tagudin, Ilocos Sur to celebrate the birthday of his child. Dasalla acceded to the invitation[22] but when they arrived at Castro's house at around 2:00 or 3:00 p.m, they found out that there was no birthday celebration. Instead, there were only two (2) unidentified men in Castro's house. Upon entering Castro's house, the latter tossed a jacket to Rabago, then

excused himself on the pretense of getting something from his room. Thereafter, the two (2) men armed with guns, later on identified by Dasalla as SPI Lizardo and PO1 Bautista, emerged pointing their weapons at Dasalla and Rabago while shouting “Dapa”. Dasalla immediately dropped face down on the floor while Rabago tried to run but Castro caught up with her. SPI Lizardo and PO1 Bautista then frisked Dasalla, got P14,000.00 from his pockets, and tied his hands with a rope. They also frisked the jacket earlier tossed by Castro to Rabago and found shabu inside its pocket.[23]

SPI Lizardo and PO1 Bautista allegedly boarded Dasalla and Rabago in a jeepney. They stopped at the old police station in the Tagudin Municipal Hall where SPI Lizardo alighted and remained for about 30 minutes. When they reached the PDEA Regional Office, SPI Lizardo offered Dasalla and Rabago their freedom if they had a “palit-ulo” or information regarding someone else who is selling shabu.[24]

Rabago corroborated much of Dasalla's testimony adding that when she and Dasalla were securely tied, the PDEA agents took a white thing hidden on the armrest of a long plastic chair and told them it was theirs. She further claimed that while she was standing outside Castro's house, the latter took the three (3) plastic sachets from the jacket earlier tossed at her. She volunteered a certain Liza for the “palit-ulo” deal and the PDEA agents took her to San Fabian, Pangasinan to arrange a transaction with Liza from whom they allegedly recovered 50 grams of shabu.[25]

The Ruling of the RTC

In its February 12, 2010 Decision,[26] the RTC held that there was no sufficient evidence to convict Dasalla of violation of Section 5 of R.A. No. 9165 as charged in the Information considering that there was no delivery of shabu. It noted that at the time of the arrest, the items were not still in Dasalla's possession and has not yet been knowingly passed to SPI Lizardo. However, the court a quo was convinced that Dasalla was guilty of illegal possession of drugs as defined in Section 11, Article II of R.A. 9165. Citing Rule 36, Section 4 of the 2000 Rules of Criminal Procedure,[27] the RTC stressed that illegal possession is necessarily included in the charge of delivery of dangerous drugs.

With respect to Rabago, the RTC found material inconsistencies in the prosecution's evidence, thus, she was acquitted on the ground of reasonable doubt. The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of all the foregoing considerations, accused William Dasalla is hereby found GUILTY of the crime of Illegal Possession of Prohibited drugs defined and penalized under Sec. 11, Art. 2, RA 9165 and he is sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day to fifteen (15) years and to pay a fine of Four Hundred Thousand Pesos (P400,000.00). The time served by the accused as preventive imprisonment shall be credited in the service of his sentence consisting of deprivation of liberty as provided under Article 29 of the Revised Penal Code.

Accused Lorelie Rabago is hereby ACQUITTED.

SO ORDERED.

Dasalla sought reconsideration[28] but to no avail. The RTC denied his motion through its April 11, 2011 Order.[29]

Unperturbed, Dasalla interposed this appeal with the following assignment of errors:[30]

- The RTC erred in declaring the buy-bust operation against the accused legal under the presumption of regularity of the performance of official functions.
- The RTC erred in appreciating the integrity and evidentiary weight of the seized items for the reason that there

was substantial compliance with the law despite the chain of custody of the seized drugs being not unbroken.

- The RTC erred in appreciating the testimonies of the prosecution witnesses despite serious issues as to their credibility.

Dasalla insists that the chain of custody was not completely established by the prosecution and the arresting team failed to strictly comply with the procedure outlined in Section 21 of R.A. No. 9165 particularly the taking of photograph and inventory of seized items at the nearest police station immediately after the alleged buy-bust. According to Dasalla, such deficiencies in the handling of the confiscated drugs create a reasonable doubt as to the identity of the corpus delicti of the crime. He also claims that Castro's testimony is tainted because the latter merely set him up as his own "palit-ulo".

This Court's Ruling

The appeal is meritorious.

In view of the indistinct and fungible character of shabu, Section 21, paragraph 1 of Article II of R.A. 9165 imposes strict guidelines and procedures concerning its seizure and disposition, thus:

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[.] (Emphasis supplied.)

Corollary thereto, Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 provides:

xxx

(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. (Emphasis supplied)

The wisdom behind the institution of the foregoing legal safeguards concerning the seizure and disposition of dangerous drugs was elucidated by the Supreme Court in the case of *Malillin v. People*,^[31] viz.:

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases – by accident or otherwise in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with

another or been contaminated or tampered with. (Emphasis supplied)

In this case, the records clearly show that the procedure laid down in Section 21 of R.A. No. 9165 and its IRR were not complied with. No photograph of the seized items was taken. SPI Lizardo and PO1 Bautista candidly admitted that the marking and inventory of the seized items were done at the PDEA Regional Office in San Fernando City, La Union and not at the place where the buy-bust operation was conducted or at the nearest police station in Tagudin, Ilocos Sur. The Certificate of Inventory[32] likewise shows that there was no representative from the Department of Justice when the physical inventory was taken.

While the last paragraph of Section 21(a) of the IRR provides a saving mechanism to ensure that not every case of non-compliance irreversibly prejudices the State's evidence, it is significant to note that this saving mechanism applies only if the State has sufficient explanation as to its lapse or lapses in complying with the procedures.[33] In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[34] Such is not the case here. No explanation whatsoever was offered by the prosecution in order to justify the procedural lapses in this case.

Even assuming that compliance with the procedures mandated by R.A. No. 9165 had not been practical or possible for the buy-bust team to do, the saving mechanism would still not be applicable due to the lack of a credible evidence showing that the integrity and evidentiary value of the seized drugs were not compromised in any way. It bears stressing that doubts on the identity and integrity of the seized drugs are removed when every link in the chain of custody is properly established. The chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would thus include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the same would admit 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.[35] Unfortunately, the prosecution's evidence does not accord Us that assurance. It failed to establish the following links in the chain of custody as enumerated in the case of *People v. Nandi*,[36] viz.:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

As disclosed by the records, there are glaring gaps between the first, second, third and fourth link in the chain of custody.

First Gap: As discussed earlier, SPI Lizardo and PO1 Bautista failed to mark the seized items immediately upon seizure. As stressed by the Supreme Court in a catena of cases, marking after seizure is the starting point in the custodial link, thus, it is vital that the seized items are immediately marked because succeeding handlers of the specimen will use the markings as references. 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.[37] Notably, the testimonies of the arresting officers are bereft of the details as to who took the seized items from Dasalla and Rabago. Neither SPI Lizardo nor PO1 Bautista testified as to who among them had initial custody of the sachets and what precautions they undertook to ensure that the recovered items would not be mixed up. The sachets of shabu was allegedly handled by PO1 Bautista from Tagudin, Ilocos Sur to the PDEA Regional Office in San Fernando City, La Union but it was SPI Lizardo who uniformly marked the confiscated items with his initials “RRL” upon arrival at their office. These markings do not have any distinguishing signs or uniqueness that could have differentiated the sachets seized from Dasalla with that taken from Rabago. In the absence of such distinct marks, We cannot give full credence to SPI Lizardo's testimony that he was able to identify the seized items based only on the size of the plastic sachets. Such testimony was also rendered doubtful by the absence of photograph showing that there were indeed big and small sachets of white crystalline substance.

Second Gap: SPI Lizardo claimed that PO1 Bautista handled the seized drugs while they were in transit to PDEA Regional Office in San Fernando City, La Union. However, his testimony was not corroborated either by PO1 Bautista or Castro. There is also no testimony on how they kept the confiscated items intact while on transit. The totality of their testimonies lacked the essential details on what actions, if any, did PO1 Bautista do to preserve the items, i.e., where did he place the seized items to distinguish the sachets from Rabago with that recovered from Dasalla.

Third Gap: It appears from the letter request[38] for laboratory examination that the five (5) sachets of shabu were brought by PO1 Bautista to the PNP Crime Laboratory only on January 11, 2005 at around 12:25 in the morning and the same was received by PO1 Bucasas. However, PO1 Bucasas did not testify as to the condition of these five (5) sachets when he received them from PO1 Bautista. Further, some nagging questions arise at this stage that create doubts as to the integrity of the specimen subjected to laboratory examination, viz.: how long was the travel from Tagudin, Ilocos Sur to the PDEA Regional Office that it took them until 12:25 in the morning of January 11, 2005 to bring the specimen to the PNP crime laboratory; who had temporary custody of the seized items before they were brought to the crime laboratory, and what precautions did the custodian take to preserve the integrity of the specimen. These details are necessary considering the long interval between the alleged confiscation of the shabu and its examination by the forensic expert. The possibility of tampering is not far-fetched considering the long interval of time in transporting the seized items and the absence of precautionary measures to preserve their identities.

The Court cannot simply close its eyes to the foregoing procedural lapses and presume that the arresting officers performed their duties in a regular manner. Where the official act in question is irregular on its face, the presumption of regularity cannot stand.[39] Here, the official acts of SPI Lizardo and PO1 Bautista were clearly shown and proven to be irregular and mistakenly relied upon by the court a quo. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused-appellant.[40]

The procedural lapses aforementioned and the glaring gaps in the chain of custody definitely create reasonable doubts as to whether the drugs confiscated from Dasalla were the same drugs brought to the crime laboratory for chemical analysis, and eventually offered in court as evidence. Thus, without any concrete evidence on the illegal drugs allegedly found in Dasalla's possession, it cannot be said that the corpus delicti of the crime has been adequately proven. In effect, the prosecution failed to fully prove the elements of illegal possession of drugs for which Dassala was found guilty by the RTC, to wit: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and

consciously possessed the drug.[41] When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[42]

WHEREFORE, the appeal is GRANTED and the February 12, 2010 Decision and April 11, 2011 Order of the Regional Trial Court, Branch 25, Tagudin, Ilocos Sur in Criminal Case No. 849-T are hereby REVERSED and SET ASIDE. Accordingly, accused-appellant William Dasalla is ACQUITTED on the ground of reasonable doubt. His immediate release from confinement is ordered unless further detention is warranted by some other lawful causes.

The Director of the Bureau of Corrections, Muntinlupa City is DIRECTED to implement this decision and report his compliance herewith within five (5) days from receipt hereof.

Let entry of judgment be immediately issued pursuant to Section 1, Rule VII of the 2009 Internal Rules of the Court of Appeals.

SO ORDERED.

Villon (Chairperson) and Macalino, JJ., concur.

[1] See Notice of Appeal in relation to April 28, 2011 Order of the RTC giving due course to said appeal, records, pages 317-318 and 319, respectively.

[2] Penned by Presiding Judge Sixto D. Diompoc, rollo, pages 32-57.

[3] Penned by Presiding Judge Modesto L. Quismorio, Jr., records, pages 311-316.

[4] Ibid., page 1.

[5] As quoted in the February 12, 2010 Decision, rollo, page 33.

[6] See Certificate of Arraignment, William Dasalla, *ibid.*, page 17; and *ibid.*, page 33, as stated in the February 12, 2010 Decision.

[7] TSN, Augustus D' Vince Castro, November 27, 2006, page 4.

[8] TSN, SPI Reynaldo L. Lizardo, January 11, 2006, pages 4-5.

[9] TSN, PO1 Arman Bautista, March 8, 2006, pages 19-22.

[10] *Ibid.*, page 24. See also TSN, SPI Reynaldo L. Lizardo, January 11, 2006, pages 7-9.

[11] TSN, SPI Reynaldo L. Lizardo, January 11, 2006, pages 9 and 22.

[12] *Ibid.*, page 22.

[13] *Ibid.*; See also Certificate of Inventory and Joint Affidavit of Arrest of PSI Reynaldo Lizardo and PO1 Arman Bautista dated January 11, 2005, records, pages 144 and 137-138, respectively.

[14] TSN, PO1 Arman Bautista, June 28, 2006, page 16.

[15] See stamped receipt on the letter request for laboratory examination, records, page 16.

[16] See Chemistry Report Number D-002-05, *ibid.*, page 145.

[17] *Ibid.*

- [18] TSN, PI Valeriano Panem Laya II, June 28, 2006, pages 2-14.
- [19] TSN, SPI Reynaldo L. Lizardo, September 6, 2006, page 4.
- [20] Ibid., January 11, 2006, page 12
- [21] Ibid., September 6, 2006, pages 5-10.
- [22] TSN, William Dasalla, October 23, 2007, pages 3-4.
- [23] Ibid., August 4, 2008, pages 3-6.
- [24] Ibid., pages 7-11.
- [25] TSN, Lorelie Rabago (spelled as Lorelei), January 19, 2009, pages 3-12.
- [26] Supra, at note 2.
- [27] Now Section 4, Rule 126 of the Rules of Court which provides:
- Sec. 4. Judgment in case of variance between allegation and proof. – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.
- [28] See Motion for Reconsideration, records, pages 290-302.
- [29] Supra, at note 3.
- [30] See Appellant's Brief, rollo, page 67.
- [31] G.R. No. 172953. April 30, 2008.
- [32] Supra, at note 13.
- [33] People v. Ajero, G.R. No. 173794. January 18, 2012.
- [34] People v. Obmiranis, G.R. No. 181492. 16 December 2008.
- [35] Ibid.
- [36] G.R. No. 188905. July 13, 2010.
- [37] People v. Coreche, G.R. No. 182528. August 14, 2009.
- [38] Supra, at note 15.
- [39] People v. Martinez, G.R. No. 191366. December 13, 2010.
- [40] Ibid.
- [41] People v. Climaco, G.R. No. 199403. June 13, 2012.
- [42] People v. Obmiranis, supra, at note 34.

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