

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BUENAVENTURA T. CERE, ACCUSED-APPELLANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Accused-appellant Buenaventura Cere appeals the Judgment[1] of the Regional Trial Court, Branch 57 of Cebu City dated July 4, 2011 convicting him, together with co-accused Estella Estella of the charge of Violation of Section 11, Article II of Republic Act 9165, the decretal portion of which reads, to wit:

“WHEREFORE, finding guilt beyond reasonable doubt, accused Estella Estella and Buenaventura Cere are hereby sentenced each to suffer the penalty ranging from twelve (12) years and one (1) day to fifteen (15) years and a fine of P300,000.00.

Accused Cere is credited for the period during his preventive imprisonment.

The two packs of shabu are forfeited in favor of the government for proper disposal.

ORDERED.”[2]

ANTECEDENT FACTS

Accused-appellant Buenaventura Cere was charged with violation of Section 11, Article II of Republic Act 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 in an Information[3] dated October 3, 2008 docketed as Criminal Case No. CBU-84462, which read as follows:

“That on or about the 22[nd] day of September, 2008 at about 9:45 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control, one (1) heat-sealed transparent plastic sachet of white crystalline substance weighing 0.02 gram locally known as “Shabu” containing methamphetamine hydrochloride, a dangerous drug, without authority of law.”[4]

Accused is currently detained at the New Bilibid Prisons, Muntinlupa City, Philippines by virtue of an Order of Commitment[5] issued on August 9, 2011.

On November 27, 2008, a joint arraignment and pre-trial was conducted[6] against accused-appellant Buenaventura Cere and another accused in Criminal Case No. 84461 Estella Estella considering that both their cases involve the same parties and issues. After having the two (2) Informations read to them in the Cebuano-Visayan dialect, each of the accused entered separate pleas of not guilty.

Thereafter, pre-trial transpired. No stipulations or admissions were admitted; both parties agreed to have their pieces of documentary evidence marked during the course of the trial; and the issues presented were (1) Whether or not both accused are guilty of the offense charged; and (2) Whether or not the search and arrest was legal.

Trial thenceforth ensued.

Evidence of the Prosecution

On September 22, 2008 at around 9:45 in the evening, upon the instruction of CIIB Chief P/Supt. Pablo G. Labra to intensify the drive against all illegal drug activities, a group of police operatives PO3 Benigno Andrew Ilagan, PO3 Helario Coderos, PO3 Bezaleel Olmedo, Jr. and PO2 Ruben Quita, headed by PO3 Cesar Pandong, went to the interior portion of Sitio Missionary, Barangay Pasil, Cebu City.[7]

While they were in the area, they chanced upon two (2) persons sitting on a bench approximately two (2) to three (3) meters away from them, exchanging something in their palms as if experimenting on something. When they got closer to the two (2) persons, the police officers confirmed that what the two (2) people were looking into were sachets of shabu.[8]

Resultantly, the police operatives introduced themselves to the two (2) accused – Buenaventura Cere and Estella Estella and informed them of their constitutional rights. PO2 Quita held Estella Estella after recovering one (1) sachet of shabu from her while PO3 Coderos was the one holding accused-appellant Buenaventura Cere.[9]

Thenceforth, the police brought the two (2) accused to their service vehicle parked near the San Nicolas Church and proceeded to the police station at Gorordo Avenue, Cebu City. At that place, PO2 Quita marked the seized evidence from Estella with “EE-1” while PO3 Coderos did the same on the plastic sachet recovered from accused-appellant Cere with the marking “BCT”. Letter-requests[10] were then prepared for the examination of the seized articles. Thence, PO2 Quita and PO3 Coderos delivered the confiscated items, together with the letter-requests, to the PNP Crime Laboratory. They then waited for the results.[11]

Based on Chemistry Report No. D-983-2008[12] issued by Forensic Chemist Police Inspector Rendielyn L. Sahagun, the one (1) heat-sealed transparent plastic sachet with marking “BCT” containing 0.02 gram of white crystalline substance gave POSITIVE results for the presence of methamphetamine hydrochloride, a dangerous drug.

After the presentation of their witnesses, the prosecution formally offered Exhibits “A” to “H” with their respective sub-markings on November 25, 2010[13]. There being no comments/objections, the trial court admitted the same in an Order[14] dated December 13, 2010.

Evidence of the Accused-appellant

Accused-appellant vehemently denies the charge against him.[15]

He claims that on September 22, 2008, while he was doing his daily routine of sitting on the bench beside his house after dinner, he was approached by his neighbor Estella. She sat and told him that she will wait for their neighbor, Liza Monceda as she is supposed to claim her payment for the laundry job she rendered to the latter. Accompanying them was their neighbor named Christopher Menguito, but he immediately left.[16]

While they were seated on the bench for only fifteen (15) to twenty (20) minutes, two (2) unknown people arrived and offered to pawn a cellphone to Estella Estella. She declined because she had no money.[17]

After a few minutes, five (5) police officers in civilian attire came towards the bench. They requested the two (2) accused to stand up and invited them to go to the police station. Thinking that they have done nothing wrong, they heeded the request.[18]

On their way towards the service vehicle of the police officers, they questioned them on why they were invited to go to the police station. However, they were forcibly taken to the service vehicle and were frisked. They recovered One Hundred Thirty-Five Pesos (PhP135.00) from Estella.[19]

When they were at the CIIB Office at Gorordo Avenue, Cebu City, they were ordered to sit down and were shown two (2) packs of shabu taken from a drawer. PO2 Quita showed them the shabu and told them that each of the

accused owns one pack of shabu.[20]

After the presentation of the two (2) witnesses for the defense – accused-appellant himself and Estella, they rested their case as they offered no exhibit.[21]

On July 4, 2011, the trial court found accused-appellant Buenaventura Cere guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs.[22] The court a quo ruled that the pieces of evidence presented by the prosecution prevailed over accused-appellant's claim of planting of evidence. The RTC proclaimed no doubt that the packs of shabu recovered from the accused were the very same items presented in court.

Seeking relief from his conviction, accused-appellant Buenaventura Cere files the instant appeal with the following assigned errors, to wit:

I.

THE TRIAL COURT IN FINDING THE ACCUSED-APPELLANT GUILTY EVEN WHEN THERE IS DOUBT IN THE AUTHENTICITY OF THE EVIDENCE ADMITTED AGAINST HIM DUE TO SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY;

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON THE IMPROBABLE TESTIMONY OF THE ARRESTING OFFICERS[23]

OUR RULING

Accused-appellant insists on his innocence and assails his conviction on the basis of the following reasons, to wit:

- The marking on the seized specimen was done not upon immediate confiscation but only at the police station;
- It was admitted by the arresting officers that no inventory nor photographs were taken in violation of Section 21 of the Dangerous Drugs Act;
- Moreover, while it may be true that Section 21 of RA 9165 provides a saving clause in case of failure to strictly comply with its requirements, such clause is conditioned upon a clear showing of a plausible explanation for such lapse. However, no such explanation or justification was provided by the arresting police officers;
- The lapses committed by the arresting police officers in the arrest of accused-appellant cannot be cured by mere presumption of regularity in the performance of their official duties;
- The testimony of the police officers were conflicting as to who prepared the letter-request for the examination of the seized specimen;
- There was a gap in the chain of the custody of the seized articles as the testimony of Forensic Expert Sahagun was dispensed with without stipulating as to who handled or took custody of the seized drugs after its examination.

Moreover, accused-appellant insists that the testimony of the police officers were contrary to normal human behavior as it was highly improbable that:

- At a distance of about two (2) to three (3) meters, the police officers can clearly see that accused-appellant was holding a plastic pack containing white crystalline substance;
- that someone who was in possession of something illegal would so carelessly examine the same way as it was described by the prosecution witnesses.

In the main, the core issue in this appeal is whether the prosecution was able to establish beyond reasonable doubt

the guilt of accused-appellant Cere.

The prosecution failed to establish accused-appellant's guilt beyond reasonable doubt, hence, a reversal of his conviction is justified and called for.

In order for prosecution for illegal possession of a dangerous drug to prosper, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[24]

As it were, the dangerous drug itself forms an integral and key part of the corpus delicti of the offense of possession of prohibited drugs. Withal, it is essential in the prosecution of drug cases that the identity of the prohibited drug be established beyond reasonable doubt. This means that on top of the elements of possession or illegal sale, the fact that the substance illegally possessed is, in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. The chain of custody requirement, as stressed in *People v. Cervantes*, and other cases, performs this function in that it ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed.[25] *People v. Cervantes* describes the mechanics of the custodial chain requirement, thusly:

As a mode of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone 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 it was delivered to the next link in the chain.

Paragraph 1, Section 21, Article II of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs, viz:

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.

The Supreme Court has emphasized the import of Section 21 as a matter of substantive law that mandates strict compliance. It was laid down by Congress as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Under the principle that penal laws are strictly construed against the government, stringent compliance therewith is fully justified.[26]

In the present case, a careful and thorough scrutiny of the records would show that the prosecution wretchedly failed to prove that the arresting police officers complied with the foregoing procedural safeguards indicated in

RA 9165. First, the records contain no physical inventory report or photograph of the seized illegal drugs. The arresting officers in fact admitted such deficiency of inventory and photographs. Second, no mention was made of the police officers' attempt to contact a representative from the media and the DOJ, and an elected public official. Nowhere can it be found that the marking of the items was done in the presence of any of the said third-party representatives. Third, police officers Quita and Coderos, the ones who delivered the confiscated articles to the crime laboratory, failed to specify the person who received them upon delivery. Interestingly, a careful look at the Request for Laboratory Examination reveals that the one who received the same, PO3 Sudaria, was not the same person who conducted the laboratory examination. In this case, it was Police Inspector Sahagun. Patently, this raises a question as to who possessed the confiscated drugs from the time it was received at the crime laboratory up to the time it was actually tested constitutive of a crucial gap in the chain of the custody of the illegal drugs seized. Fourth, prosecution's evidence failed to reveal the identity of the person who had the custody and safekeeping of the drugs after its examination and pending its presentation in court. This unexplained link also created doubt as to the integrity of the evidence.

People v. Habana[27] thoroughly discusses the proper procedure for the custody of seized or confiscated items in dangerous drugs cases in order to ensure their identity and integrity, as follows:

Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who would then send it by courier to the police crime laboratory for testing. Since it is unavoidable that possession of the substance changes hand a number of times, it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. At the trial, the officer can then identify the seized substance and the procedure he observed to preserve its integrity until it reaches the crime laboratory.

If the substance is not in a plastic container, the officer should put it in one and seal the same. In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity.

If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.

Again, in this case, the arresting police officers failed to comply with the procedure in the custody of seized drugs compromising the identity and integrity of the items seized. As can be gleaned from the records, the prosecution merely presented police officers Quita and Coderos who were the ones who marked the seized drugs and delivered the same to the forensic chemist. The presentation of forensic chemist Sahagun was dispensed with in view of the parties' stipulations as to her expertise in the examination of dangerous drugs; the results of her examination of the illegal drugs; and her positive identification of the drugs. Notably, however, the parties failed to stipulate that it was the forensic chemist who took custody of the confiscated drugs upon its delivery to the crime laboratory and immediately thereafter up to the time it was presented in court. No stipulation of such kind was extant in the records. Hence, the need to present the forensic expert in court which the prosecution deplorably failed to do so. Hence, the break in the chain.

On top of all, in all the foregoing major lapses, the prosecution witnesses miserably missed out in giving an explanation of why the procedure was not followed, or whether there was a justifiable ground for failing to do so. The arresting officers and the prosecution simply did not bother discussing these matters.

While it may be true that minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused,” the Supreme Court nevertheless declared that “when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence.” The Highest Court went further in ruling that such doubt “cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties.” Accordingly, “the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused-appellant Buenaventura Cere.”[28]

It must be emphasized that in a prosecution of the possession of methamphetamine hydrochloride prohibited under Republic Act No. 9165, the State not only carries the heavy burden of proving the elements of the offense of, but also bears the obligation to prove the corpus delicti, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the corpus delicti when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[29]

In view of the prosecution's failure to prove the indispensable element of the corpus delicti, it is but highly proper to exculpate accused-appellant Buenaventura Cere, on the basis of reasonable doubt, from the criminal liability imposed upon him.

WHEREFORE, premises considered, the appeal is GRANTED. The assailed Judgment of the Regional Trial Court, Branch 57 of Cebu City dated July 4, 2011 in Criminal Case No. CBU-84462 is REVERSED and SET ASIDE. This Court ACQUITS accused-appellant Buenaventura T. Cere based on reasonable doubt and We ORDER his immediate release from detention, unless he is detained for any other lawful cause.

We further DIRECT the Director of the Bureau of Corrections to implement this Decision and to report to this Court on the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

Ingles, G.T., Chairperson, and Lagura-Yap, M.B., JJ., concur.

[1] Penned by Judge Enriqueta Loquillano-Belarmino, Record, pp. 66-71

[2] Id, p. 71

[3] Id, p. 1

[4] Id, p. 1

[5] Id, p. 81

[6] Order dated November 27, 2008, Id, pp. 15-16

[7] TSN (Quita) March 18, 2010, Record, pp. 5-6; TSN (Coderos) July 22, 2010, Record, pp. 5-6

[8] TSN (Quita) March 18, 2010, Record, pp. 6-7; TSN (Coderos) July 22, 2010, Record, pp.; 6-8

[9] TSN (Quita) March 18, 2010, Record, pp. 8-12

- [10] Exhibit “E”, Record, p. 47
- [11] TSN (Quita) March 18, 2010, Record, pp. 12-15; TSN (Coderos) July 22, 2010, Record, pp. 10-14
- [12] Exhibit “F”, Record, p. 48
- [13] Formal Offer of Documentary Exhibits, Id, pp. 43-44
- [14] Id, p. 49
- [15] TSN (Cere) June 1, 2011, Record, p. 12
- [16] TSN (Cere) June 1, 2011, Record, pp. 5-6; p. 17
- [17] TSN (Cere) June 1, 2011, Record, pp. 6-7; TSN (Estella) January 27, 2011, Record, pp. 5-8
- [18] TSN (Cere) June 1, 2011, Record, pp. 7-8; TSN (Estella) January 27, 2011, Record, pp. 8-9
- [19] TSN (Estella) January 27, 2011, Record, pp. 11-12
- [20] TSN (Cere) June 1, 2011, Record, pp. 11-12
- [21] Order dated June 1, 2011, Record, p. 60
- [22] Decision dated July 4, 2011, Record, pp. 66-71
- [23] Rollo, p. 23
- [24] Fajardo, et. al. vs. People, G.R. No. 185460, July 25, 2012
- [25] People vs. Adrid, G.R. No. 201845, March 6, 2013
- [26] Rontos vs. People, G.R. No. 188024, June 5, 2013
- [27] G.R. No. 188900, March 5, 2010
- [28] See People vs. Ancheta, et. al., G.R. No. 197371, June 13, 2012
- [29] See People vs. Relato, G.R. No. 173794, January 18, 2012

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