

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONNIE HILADO Y ANDRADA, ALIAS “KID RONNIE”, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

This is an appeal from the Decision[1] dated 30 July 2012 of the Regional Trial Court, 6[th] Judicial Region, Branch 69, Silay City in Crim. Case No. 8215-69 convicting the accused-appellant for “Violation of Section 11(3), Article II of Republic Act No. 9165. The dispositive portion of the said decision reads,

“WHEREFORE, PREMISES CONSIDERED, this Court finds accused Ronnie Hilado y Andrada, alias “Kid Ronnie”, GUILTY beyond any reasonable doubt of Violation of Section 11(3) of Article II of Republic Act No. 9165”, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 as his guilt was proven by the prosecution beyond any reasonable doubt.

Accordingly, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences accused Ronnie Hilado y Andrada alias “Kid Ronnie”, to suffer the penalty of imprisonment of FOURTEEN (14) YEARS and EIGHT (8) MONTHS to SEVENTEEN (17) YEARS and FOUR (4) MONTHS, the same to be served by him at the National Bilibid Prison, Muntinlupa City, Philippines.

Accused is, further, ordered to pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00), Philippine Currency.

The two (2) heat-sealed transparent plastic sachets containing methamphetamine hydrochloride or shabu are ordered remitted to the Philippine Drug Enforcement Agency (PDEA), Negros Occidental Police Station, Camp Alfredo Montelibano, Bacolod City, for proper disposition.

NO COSTS.

SO ORDERED.”

THE FACTS

By its Inquest Investigation Report[2] dated 20 April 2011, the Office of the City Prosecutor dismissed the charge against Ronnie Hilado y Andrada alias “Kid Ronnie” (hereinafter accused-appellant) for violation of Section 5 of Article 11 of Republic Act of 9165, but found sufficient evidence to hold him for trial for violation of Section 11 thereof.

The charge sheet[3] filed against the accused-appellant reads,

“That on or about 11:10 P.M. of April 16,. 2011, in Silay City, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, without authority of the law, did then and there, willfully, unlawfully and feloniously have in his possession and control two (2) heat-sealed sachets of Methamphetamine Hydrochloride (shabu) having a total weight of 0.04 gram, a dangerous drug.

Contrary to law.”

The case was docketed as Crim. Case No. 8215-69, and raffled off to Branch 69 of the court a quo. The accused entered a plea of not guilty upon arraignment.[4]

The witnesses presented by the prosecution were PO3 Rayjay Rebadomia, Police Chief Inspector Jerome Puentespinja y Sedigo (Forensic Chemist), and PO2 Roberto Lanaza. Accused Rronnie Hilado y Andrada alias “Kid Ronnie” and his brother, Roland Hilado were the witnesses for the defense.

The facts established by the prosecution and defense are summarized in the decision as follows:

“Submission is made by the prosecution that at about 11:00 in the evening of April 16, 2011, PO2 Robert Roy Lanaza y Garzon and PO2 Rayjay Rebadomia y Daliasca were at Sitio Beraño, Barangay Lantad, Silay City, on a foot patrol. They saw near a lamp post two persons, at a distance of about five to ten meters away from them, acting suspiciously. One of these persons was handing an item to the other. Named police officers approached these persons to verify but one of them ran away, leaving the other who stood still. The person who was left standing was accused, Ronnie Hilado y Andrada, alias “Kid Ronnie”. As the police officers wore civilian clothes, they identified themselves to be policemen. In response, the accused Ronnie Hilado y Andrada, alias “Kid Ronnie” retorted that he was not selling shabu, without the question being raised to him by the police officers. He further, emptied the pockets of his pants to show that he was not, indeed, engaged in the selling of shabu at said time and handed their contents to the police officers. Two (2) small sachets of suspected shabu were among the items which he readily gave to these policemen, inclusive of his cell phone, a lighter, and cash in the amount of P147.25. The accused was placed under arrest by the police officers and brought by them, thereafter, to the Philippine National Police headquarters of Silay City, on foot. A request for laboratory examination dated April 18, 2011 (Exhibit “C”, prosecution) was made on the two (2) sachets of suspected shabu recovered from the accused. Chemistry Report No. D-068-2011 (Exhibit “F”, prosecution) confirmed that the two (2) small plastic sachets submitted for laboratory examination, indeed, contained methamphetamine hydrochloride, locally known as shabu.”

“A denial made by accused, Ronnie Hilado y Andrada, alias “Kid Ronnie” of the incident attendant to his arrest by police officers, PO3 Rayjay Rebadomia y Dailasca and PO2 Robert Roy Lanaza y Garzon that late evening of April 16, 2011 at Sitio Beraño, Barangay Lantad, Silay City. He denied having dealt in the selling of methamphetamine hydrochloride, locally known as shabu, that late evening of April 16, 2011, as he, likewise, denied ownership and possession of the two (2) small plastic sachets of what were later on, confirmed to be methamphetamine hydrochloride, locally known as shabu. He claimed to have been forced to admit ownership and possession of said items at the police headquarters of the Philippine National Police, Silay City. He claimed to have been mauled by Police Officer Jonathan Sumugat at said police station in an effort to get a confession from him. Denial was the defense raised by the accused in the present criminal action.”

Upon these facts, the Regional Trial Court rendered judgment convicting the accused of the offense charged.

THE RULING OF THE REGIONAL TRIAL COURT

In convicting the accused, the RTC ratiocinated that,

“The accused merely denied the recovery of the referred two (2) sachets of suspected shabu from his possession and the incident which led to their recovery. He offered no other defense. Denial is admittedly a weak defense, more so, where the acts attributed to the accused had been set in detail by the prosecution witnesses, in the instant case, arresting officers, PO3 Rayjay Rebadomia y Daliasca and PO2 Robert Roy Lanaza y Garzon. Questions had been raised by the defense on the legality of the arrest undertaken by the police officers on accused on the assertion that the same violated the rights of the accused, to be secured in

their persons, houses, papers, and effects against unreasonable searches and seizures. A settled exception to this right guarantee is the arrest made during the commission of the crime. Such warrantless arrest is valid and reasonable under Rule 113, Section 5(a) of the Revised Rules on Criminal Procedure, which provides:

'Section 5. Arrest without 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.

The police officers in the instant case saw the accused handing to another what they suspected to be a contraband. They hurriedly approached the accused and introduced themselves as police officers. The accused voluntarily surrendered to them the contents of his pocket, which included a cell phone, a lighter, and P147.25 in various denominations. To the surprise of named police officers, two (2) small heat-sealed plastic sachets of what the police officers suspected to contain methamphetamine hydrochloride, otherwise known as shabu, were among the item handed to them by the accused. The police officers had reasonable premise to suspect that the accused at the time he was confronted by them was engaged in the selling of methamphetamine hydrochloride (shabu), as he was already listed in the drug list of suspected drug personalities in the area. Further, the surveillance and monitoring activities done by named police officers at Sitio Beraño, Barangay Lantad, Silay City, where the accused was apprehended, was for the reason that drug personalities were reported to be plying their trade at said place, the accused included. Under these circumstances, the accused was clearly arrested in flagrante delicto, as he was then committing a crime, a violation of Republic Act No. 9165, or the Dangerous Drugs Act of 2002, within the view of the police officers. Further, the police officers were actively performing their duties at said time since they were conducting surveillance and monitoring activity on known drug personalities in the area. These coupled with the manifest and overt acts of accused constitute sufficient basis on the part of the police officers to believe that a crime was actually being committed. The case of the accused, thus, falls, within the exception to the rule requiring a warrant before effecting an arrest.

It be said in cases involving violation of the Dangerous Drugs Act, credence should be given to the narration of the incident by prosecution witnesses, most especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Further, in the absence of proof of any ill-motive on the part of these police officers to falsely impute such a serious crime against the accused, the presumption of regularity of performance of official duty as well as the finding of credibility on the statements given by the arresting police officers, shall always prevail over the uncorroborated and unsubstantiated denial of the accused. (*Ampatuan vs. People*, G.R. No. 183676, June 22, 2011; *People vs. Llamado*, G.R. No. 185278, 13 March 2009; *People vs. Rodante de Leon*, G.R. No. 186471, January 25, 2010).

In the case at hand, the prosecution had sufficiently laid in evidence that accused, Ronnie Hilado y Andrada, alias “Kid Ronnie”, was in possession of two (2) heat-sealed transparent plastic sachets containing white crystalline substance, which, when subjected to laboratory examination, was confirmed to be methamphetamine hydrochloride, locally known as shabu, with a weight of 0.02 gram each. He failed to show that he had the authority to possess these items when found in his possession.”

Hence, this appeal wherein the accused-appellant makes the following assignment of errors:

“I

The trial court faulted in affirming the identity and chain of custody of the seized shabu despite non-compliance with Section 21 of RA 9165.

II

The court a quo gravely erred in relying on the weakness of the defense in arriving at a conviction despite the failure of the prosecution to establish the guilt of the accused-appellant beyond reasonable doubt.”

By its Order,[5] the RTC committed the person of accused-appellant with the Director of Prisons, Muntinlupa City, Metro Manila, while his appeal is pending with this court.

The accused-appellant's arguments:

In his brief, the accused-appellant argues that there is non-compliance with Section 21 of RA 9165 re: chain of custody of the seized drug. One, the seized drug was not marked in his presence and immediately upon confiscation. This omission puts to doubt the integrity and evidentiary value of the seized drug, that is, whether it is the same drug seized from him. Two, while the police officers were able to present a certificate of inventory and a photograph showing his face and the items supposedly seized from him, there is no indication that the same was done in the presence of the witnesses required by law to be present thereat. Three, the police officers failed to submit the confiscated drug to the crime laboratory within twenty-four (24) hours after the confiscation. Records will show that the drug specimen was submitted by the police officers to the crime laboratory for examination only on April 18, 2011, or, two (2) days after its confiscation on April 16, 2011. Yet, no explanation was given by the police officers on the delay. The RTC should have taken judicial notice of some wicked practices of police officers, like, planting of evidence just to ensure conviction of alleged undesirable elements of society. It is settled rule that “the courts thoroughly evaluate and differentiate errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law.” More important, every fact constituting the crime must be proved beyond reasonable doubt. Four, the records is bereft of any information “as to who handled the confiscated drug after its examination up to the time it was presented in court. “Sections 3 and 6(8) of the Dangerous Drugs Board Regulation No. 2, series of 2003 requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until its disposal; the board regulation also required identification of the individuals in this part of the chain.” In this instance, no iota of evidence was adduced by the prosecution to show how the specimen was handled after the laboratory examination and the identity of the persons who had custody of confiscated drug. Without such evidence, a serious gap is thereby created in the chain of custody, which gap makes suspect the integrity and evidentiary value of the confiscated drug. On these circumstances, acquittal is in order.

That, he denies the offense charged against him and the ownership of the items confiscated from him. Tellingly, the prosecution's evidence is weak and uncorroborated and “cannot be used to advance the cause of the prosecution as its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.” As settled, “evidence, to be believed, must have been given not only by a witness who is credible but that his or her testimony must also hurdle the test of conformity with the knowledge and common experience of mankind.”

That, he was seen with a companion near a lamp post at a distance of five to ten meters away from the apprehending police officers; that, he was acting suspiciously; that, he was handing an item to the other person; that, as the apprehending police officers were approaching them, the other person ran away leaving him alone; that, he, without being asked, readily told the said police officers that he was not selling shabu; and that, he emptied his pockets and handed his mobile phone, lighter, cash and the suspected shabu to the police officers – are all incredible allegations. Moreover, if he, indeed, committed the crime charged against him then why did he not run like his companion.

The plaintiff-appellee's counter-arguments

The prosecution, thru the testimonies of the police officers, ably proved the guilt of the accused-appellant. Firstly,

all the elements of the crime of illegal possession of dangerous drugs were sufficiently proved. Too, the Chemistry Report No. D-068-2011 prepared by the PNP forensic chemist affirms that the specimen found in the possession of the accused-appellant is positive for Methamphetamine Hydrochloride, a dangerous drug. On these considerations, the elements of illegal possession of drugs under Section 11, Article II of Rep. Act No. 9165 have been satisfied, thus, the RTC was correct in convicting the accused-appellant.

Secondly, the chain of custody of the drugs was duly established. Case law has it that “‘immediate confiscation’ contemplates even the marking at the nearest police station or office of the apprehending team.” This is what happened in the instant case. Anent the accused-appellant’s allegation that the conduct of the inventory and photograph of the evidence was not made in the presence of the required witnesses under the law, such an allegation is belied by the signatures of the two barangay kagawad who affixed their signatures therein.

Moreover, the failure of the police officers to turn over the confiscated items within twenty-four (24) hours to the crime laboratory is not a serious procedural lapse considering that these items can be accounted for in the custody of the PNP Silay Silay before turn-over to the crime laboratory.

Finally, the prosecution sufficiently established that the items presented in court are the same items taken from the accused-appellant contrary to the accused-appellant’s claim.

THE ISSUES

At the threshold of the controversy are the following issues:

(1)

whether the exception to the prohibition against search incidental to a valid warrantless arrest obtains in this instance; and

(2)

whether the guilt of the accused-appellant for the illegal possession of shabu, a dangerous drug, was proven beyond reasonable doubt.

THE COURT’S RULING

This court resolves to acquit the accused-appellant.

Onset, “an appeal in a criminal case throws the whole case wide open for review and that the appellate court can correct errors, though unassigned, that may be found in the appealed judgment.” In this instance, the accused-appellant did not assign as error in his appeal brief the legality or illegality of his arrest without warrant and the search made incidental thereto, although he mentioned in his brief the circumstance considered by the RTC that “he was acting suspiciously”.

Re: search incidental to a legal warrantless arrest

On this note, the case of *People v. Cuizon*[6] is instructive, viz -

Well entrenched in this country is the rule that no arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority. So sacred is this right that no less than the fundamental law of the land ordains it:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose, shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under

oath or affirmation of the complainant and the witnesses he may "produce, and particularly describing the place to be Searched, and the persons or things to be seized."

It further decrees that any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding.

However, the right against warrantless arrest and search and seizure is not absolute. Thus, under Section 5 of Rule 113 of the Revised Rules of Court, an arrest without a warrant may be lawfully made by a peace officer or a private 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 in fact just been committed, and he has personal knowledge of facts indicating 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 temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

On the occasion of any of the aforementioned instances of legitimate arrest without warrant, the person arrested may be subjected to a search of his body and of his personal effects or belongings, "for dangerous weapons or anything which may be used as proof of the commission of an offense," likewise without need of a search warrant.

However, where a person is searched without a warrant, and under circumstances other than those justifying a warrantless arrest, as discussed above, upon a mere suspicion that he has embarked on some criminal activity, and/or for the purpose of discovering if indeed a crime has been committed by him, then the search made of such person as well as his arrest are deemed illegal. Consequently, any evidence which may have been obtained during such search, even if tending to confirm or actually confirming such initial suspicion, is absolutely inadmissible for any purpose and in any proceeding, the same being "the fruit of the poisonous tree". Emphasis is to be laid on the fact that the law requires that the search be incident to a lawful arrest, in order that the search itself may likewise be considered legal. Therefore, it is beyond cavil that a lawful arrest must precede the search of a person and his belongings. Were a search first undertaken, then an arrest effected based on evidence produced by the search, both such search and arrest would be unlawful, for being contrary to law.

Under the foregoing provisions, it is the considered opinion of this court that the instant case does not fall under any of the exceptions to the prohibition against a warrantless search.

One. The accused-appellant is not a escapee from prison.

Two. There is no sufficient probable cause to warrant the police officers' conduct. As defined in *People v. Malmstedt*,^[7] probable cause is:

x x x such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. The required probable cause that will justify a warrantless search and seizure is not determined

by any fixed formula but is resolved according to the facts of each case.

As can be gleaned from the testimony of PO3 Rayjay Rebadomia, the accused-appellant was standing near a lamp post and handing something/an item to another person. Thus, his testimony goes this way,

“Q: While you were conducting at Sitio Beraño, what happened?

A: As we passed by chance we saw two (2) persons transacting something. We saw the other person giving money to another person.

Q: Who was that person giving money to the other person?

A: That person alias Kid Ronnie Hilado.

Q: How many meters away were you from these two (2) persons?

A: At about five meters near the chapel of the place.

Q: Beside the road?

A: Yes, beside the main road.”[8]

On this note, the case of *People v. De los Reyes*,^[9] citing *People v. Molina*^[10] which in turn cited *People v. Chua Ho San*,^[11] *People v. Doria*,^[12] *People v. Aminnudin*,^[13] *People v. Mengote*,^[14] *People v. Encinada*,^[15] and *People v. Malacat*,^[16] comes to mind. Viz -

“In *People v. Molina*, we cited several cases involving in flagrante delicto arrests preceding the search and seizure that were held illegal, to wit:

In *People v. Chua Ho San*, the Court held that in cases of in flagrante delicto arrests, a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. The arresting officer, therefore, must have personal knowledge of such fact or, as recent case law adverts to, personal knowledge of facts or circumstances convincingly indicative or constitutive of probable cause. As discussed in *People v. Doria*, probable cause means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

As applied to in flagrante delicto arrests, it is settled that "reliable information" alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, are not sufficient to constitute probable cause that would justify an in flagrante delicto arrest. Thus, in *People v. Aminnudin*, it was held that "the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension."

Likewise, in *People v. Mengote*, the Court did not consider "eyes . . . darting from side to side . . . [while] holding . . . [one's] abdomen," in a crowded street at 11:30 in the morning, as overt acts and circumstances sufficient to arouse suspicion and indicative of probable cause. According to the Court, "[b]y no stretch of the imagination could it have been inferred from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in [the arresting officers'] presence." So also, in *People v. Encinada*, the Court ruled that no probable cause is gleanable from the act of riding a motorela while

holding two plastic baby chairs.

Then, too, in *Malacat v. Court of Appeals*, the trial court concluded that petitioner was attempting to commit a crime as he was "'standing at the corner of Plaza Miranda and Quezon Boulevard' with his eyes 'moving very fast' and 'looking at every person that come (sic) nearer (sic) to them.'" In declaring the warrantless arrest therein illegal, the Court said:

Here, there could have been no valid in flagrante delicto . . . arrest preceding the search in light of the lack of personal knowledge on the part of Yu, the arresting officer, or an overt physical act, on the part of petitioner, indicating that a crime had just been committed, was being committed or was going to be committed.

It went on to state that —

Second, there was nothing in petitioner's behavior or conduct which could have reasonably elicited even mere suspicion other than that his eyes were "moving very fast" — an observation which leaves us incredulous since Yu and his teammates were nowhere near petitioner and it was already 6:30 p.m., thus presumably dusk. Petitioner and his companions were merely standing at the corner and were not creating any commotion or trouble . . .

Third, there was at all no ground, probable or otherwise, to believe that petitioner was armed with a deadly weapon. None was visible to Yu, for as he admitted, the alleged grenade was "discovered" "inside the front waistline" of petitioner, and from all indications as to the distance between Yu and petitioner, any telltale bulge, assuming that petitioner was indeed hiding a grenade, could not have been visible to Yu.

Clearly, to constitute a valid in flagrante delicto arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. (Emphases supplied.)

Withal, the accused-appellant cannot be said to be committing a crime. Neither was he about to commit one nor had he just committed a crime. The accused-appellant was merely standing near a lamp post and allegedly giving money to another person. It cannot be inferred from his conduct that the accused-appellant was acting in a manner that would engender a reasonable ground for the apprehending police officers to suspect and conclude that he was committing a crime. In fact, aside from the bare testimony of the police officer that the accused-appellant's name is included in the "List of Drug Personalities", there is nothing in the records to show that the accused-appellant has long been identified as a drug pusher or user, or, that the apprehending police officers have personal knowledge of his activities and what he looks like. Prior to the accused-appellant's arrest, no surveillance was conducted on his activities as testified to on cross by PO3 Rayjay Rebadomia, thus,

"Q: On April 16, 2011 you took surveillance on accused Ronnie Hilado?

A: No, Sir.

Q: You only happened to see him by chance where you conducted foot patrol at Sitio Beraño at Barangay Lantad, Silay City?

A: Yes, Sir.

Q: In what particular place at Sitio Beraño, when you saw the accused together with the other person?

A: Near the chapel.

Q: It was already 11:00 in the evening?

A: Yes, Sir.

Q: Upon seeing these two persons in gesture of handling something to the other person, it came to your mind

that there was a suspicious transaction between the two persons.

A: Yes, Sir.

Q: When you approached them you believed these two were making transaction between the two person?

A: Yes, sir.

Q: However, the other person run away when he sensed you were police officers . . . drawing near to them you did not give chase to the other person?

A: No, Sir.

Q: You have no interest to the other person to go after him because he was only buying and he was never involved in illegal drug activity?

A: Yes, Sir.

Q: But the accused in this case remain standing when you approached them?

A: Because he was shocked when we were approaching them.

Q: He made no attempt to run away?

A: No, Sir.

Q: You said, you only know these two persons by chance, meaning you did not know in the first place there was ongoing transaction in that place?

A: Yes, Sir.

Q: You did not conduct surveillance on those two persons prior to April 16, 2011?

A: No, Sir.”[17]

PO3 Rebadomia continued to say on cross, that,

“Q: As a member in the Intelligence Section did you keep record of suspected illegal drug activities?

A: When we get his full name we discovered his name is in the List of Drug Personalities.

Q: But there was no attempt of any single surveillance upon his person?

A: No, Sir.”[18]

We are ever mindful of the landmark case of *People v. Malmstedt*[19] wherein the Supreme Court justified the search made on the personal belonging of Malsmtedt by the Narcom operatives even without a search warrant, thus -

The receipt of information by NARCOM that a Caucasian coming from Sagada had prohibited drugs in his possession, plus the suspicious failure of the accused to produce his passport, taken together as a whole, led the NARCOM officers to reasonably believe that the accused was trying to hide something illegal from the authorities. From these circumstances arose a probable cause which justified the warrantless search that was made on the personal effects of the accused. In other words, the acts of the NARCOM officers in requiring the accused to open his pouch bag and in opening one of the wrapped objects found inside said bag (which was discovered to contain hashish) as well as the two (2) travelling bags containing two (2) teddy bears with hashish stuffed inside them, were prompted by accused's own attempt to hide his identity by refusing to present his passport, and by the information received by the NARCOM that a Caucasian coming from Sagada had prohibited drugs in his possession. To deprive the NARCOM agents of the ability and facility to act accordingly, including, to search even without warrant, in the light of such circumstances, would be to sanction impotence and ineffectiveness in law enforcement, to the detriment of society.

But the circumstances in *Malmstedt* do not obtain in the present case. Here, there is nary any evidence to show that the apprehending police officers received any tip from an asset or informant, or, any confirmatory intelligence

information gathered from surveillance operations to establish the supposed illegal activities of the accused-appellant. Neither was there any reason for the apprehending police officers to arrest the accused-appellant without a valid warrant as he was not committing a crime nor has he just committed a crime. Elsewise stated, there was no legal basis for the apprehending police officers to effect a warrantless search of accused-appellant's person, there being no probable cause and the accused-appellant not having been lawfully arrested. Consequently, the accused-appellant's arrest being incipiently illegal, it logically follows that the subsequent search was similarly illegal, it being not incidental to a lawful arrest. On these circumstances, it cannot be overemphasized that the constitutional guarantee against unreasonable search and seizure must operate in favor of the accused-appellant. This being so, the articles confiscated from the accused-appellant could not be used as evidence against him for these are "fruits of a poisoned tree" and, therefore, must be rejected as laid down in Section 3(2), Article III of the Constitution.

It may be well to stress, that this court or any court for that matter should neither sanction nor tolerate what the apprehending police officers did in this case as it is a clear violation of the constitutional guarantee against unreasonable search and seizure.

Re: possession of illegal drugs

In *Zalameda vs. People*,^[20] the Supreme Court identified the elements of illegal possession of a dangerous drug (and illegal possession of drug paraphernalia), thus -

“Illegal possession of dangerous drugs under Section 11 of R.A. No. 9165 carries the following elements:

(1)

possession by the accused of an item or object identified to be a prohibited drug;

(2)

the possession is not authorized by law; and

(3)

the free and conscious possession of the drug by the accused.”

Nonetheless, for a successful prosecution for illegal possession of dangerous drugs, the prosecution must be able to prove that the identity and evidentiary value of the *corpus delicti* of the offense, that is, the dangerous drug itself, were properly preserved from the time of its confiscation up to the time it was presented in court. This is purposely required in order to obviate “switching” “planting” or “contamination” of evidence. If fine, there must be an unbroken chain of custody of the confiscated dangerous drug. The Supreme Court in *People vs. Climaco*,^[21] explained how important it is for the prosecution to establish an unbroken chain of custody over the confiscated illegal drug, viz -

In both cases of illegal sale and illegal possession of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*. In *People v. Alcuizar*, the Court held:

The dangerous drug itself, the shabu in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, 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-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.

In acquitting accused-appellant, this court is, likewise, mindful of the recent cases of *People vs. Salonga*[22] and *Ronstos vs. People*,[23] wherein the Supreme Court acquitted the accused for non-observance by the police authorities of the rules of procedure for handling of the confiscated dangerous drug.

The Supreme Court in *People vs. Salonga*, supra, acquitted the accused on the ground of broken links in the chain of custody, to wit,

In this case, one broken link was that of the turn-over of the seized items from the buy-bust team, to the police investigator, SPO1 Doria. PO2 Dizon testified that after he placed the marking on the five sachets of suspected shabu, he turned them over to SPO1 Doria and the specimens were submitted to the crime laboratory for examination. However, SPO1 Doria did not testify before the trial court so as to shed light on this matter. Thus Court finds this unfortunate as the prosecution even chose to dispense with his testimony.

Still another broken link was that involving the transfer of the drug specimens from SPO1 Doria to the crime laboratory. P/Sr. Insp. Perez testified that the request for laboratory examination and drug specimens were first received by PO2 Bagaoisan, the Duty Desk Officer. The latter then called her to physically receive the same. However, P/Sr/ Insp. Perez stated that he did not actually see if it was SPO1 Doria who transmitted the specimens. She merely relied on the stamp of PO2 Bagaoisan. Furthermore, PO2 Bagaoisan was not presented in court to prove that it was indeed SPO1 Doria who delivered the drug specimens to the crime laboratory.

In view of the evident breaks in the chain of custody, very serious doubts arise as to the identity of the seized illegal drugs in this case. Apparently, there can be no absolute certainty if the sachets of shabu seized from the informant were the very same drugs handed by accused-appellant, or, later on, the same drugs transmitted to the crime laboratory and eventually presented before the trial court.

These breaks in the chain of custody go into the very elements of the crime of illegal sale of drugs that was charged against accused-appellant, specifically, the elements of the identity of the object of the illegal sale and the delivery of drugs and delivery of the thing sold were not proven in this case beyond reasonable doubt.

Citing *People vs. Guzman*,[24] the Supreme Court continued in *Salonga*, supra, viz -

The gaps in the chain of custody creates a reasonable doubt as to whether the specimens seized from the accused were the same specimens brought to the laboratory and eventually offered in court as evidence. Without adequate proof of the corpus delicti, the conviction cannot stand.

In *People v. De Guzman*, this Court rules:

Accordingly, the failure to establish through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and is inability after such investigation to let the mind rest upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a person charged with a crime, but moral certainty is required as to every proposition of proof requisite to constitute the offense. A conviction cannot be sustained if there is a persistent doubt on the identity of the drug. is constrained to acquit accused-appellant.

In *Ronstos*, supra, the Supreme Court held that,

The procedure set forth in Section 21 of R.A. 9165 is intended precisely to ensure the identity and integrity of dangerous drugs seized. This provision requires that upon seizure of illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.

This 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.

Here, the procedure was not observed at all. Where it is clear that Section 21 was not observed, as in this case, such noncompliance brings to the fore the question of whether the illegal drug items were the same ones that were allegedly seized from petitioner.

The direct testimony of PO1 Pacis in connection with his identification of the envelope where he placed the two plastic sachets allegedly confiscated from petitioner does not really inspire confidence, to wit:

“Q:

What did you do with the plastic sachet that you have confiscated from the accused?

A:

After confiscating them, I marked them and placed them in an envelope in order to preserve the evidence, ma’am.

Q:

I am showing to [sic] you this white envelope, will you please have a look at it and tell the Honorable Court if this is the same envelope which contained the two plastic sachets?

A:

I am not sure, ma’am, it is not actually an envelope but an improvised envelope.”

We cannot, in good conscience, affirm the conviction of petitioner for possession of illegal drugs if the police officer charged with the preservation of the evidence cannot even be certain in the identification of the envelope that was presented in court. As held in *Dolera v. People*, there also exists in the present case a reasonable likelihood of substitution, in that the two plastic sachets that tested positive for shabu and were presented in court were not the items allegedly seized from petitioner. This possibility of substitution is fatal for the prosecution, for there is then a failure to prove the identity of the corpus delicti beyond reasonable doubt.

Just like so in the case at bar. Contrary to the RTC's conclusion, there are gaps in the chain of custody of the illegal drugs supposedly confiscated from the accused-appellant. But first, what is this so-named “chain of custody”? “Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in 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 transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.”[25]

Apropos, in *People v. Salvador*, [26] the Supreme Court accentuated that,

There are links that must be established in the chain of custody in a buy-bust situation, namely: "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."

Pertinently, it must be stressed that:

“The existence of the drug is the very corpus delicti of the crime of illegal possession of dangerous drugs and, thus, a condition sine qua non for conviction. In order to establish the existence of the drug, its chain of custody must be sufficiently established. The chain of requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.”[27]

Truly, the law enforcers are not expected to comply with all the niceties of Section 21 of the Implementing Rules and Regulations of RA No. 9165, which provides, to wit:

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:

(a)

The apprehending officer/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 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. . .

In fact, the Supreme Court have in some instances made exceptions to the strict compliance with Section 21, supra, on the condition that the integrity and evidentiary value of the confiscated items were properly preserved.

Here, the prosecution presented a Chain of Custody Form[28] showing therein who had custody of the confiscated illegal drugs. Be that as it may, the chain of custody of the illegal drugs recovered and seized from accused-appellant appears to have been broken and consequently, its integrity and evidentiary value were compromised for the following reasons,

(1) marking of the confiscated illegal drugs

Of importance in the successful prosecution for illegal possession of dangerous drugs is the marking of the confiscated dangerous drug.

In this case, the prosecution failed to mention the name of the police officer who marked the confiscated illegal drugs. After a perusal of the transcript of records, there is no showing who made such marking. While PO2 Roberto Lanaza claimed to have marked the lighter with “LTR”, the mobile phone with “CPRH” and the money in various denominations with “MREH”, there is nothing in the TSNs to show who marked the confiscated illegal drugs. When asked what happened to the two (2) heat-sealed plastic sachets containing the suspected illegal drug, PO3 Rayjay Rebadomia answered, thus -

“A: We brought it to the crime laboratory for examination.”[29]

On the other hand, PO2 Roberto Lanaza, who marked the lighter, mobile phone and cash money, testified, that,

“Q: Is the same lighter which was given to you by accused Ronnie Hilado?

A: Yes, Sir.

Q: Why do you say it was the one?

A: That the same thing he gave to us.

Q: Did you have any marking, that it was the same item?

A: I have put the marking “LTR”.

x x x x

Q: What was this CPRH?

A: That was the name we put on the cellphone of Ronnie Hilado.

x x x x

Q: Did you mark the money?

A: Yes, Sir.

Q: The marking of “MREH”.

A: The money of Ronnie Hilado.

x x x x

Q: Aside from these items what else did Ronnie Hilado give to you?

A: Aside from these items there were two (2) plastic sachets of shabu.

Prosecutor Atotubo:

May I request that the name PO3 Rayjay Rebadomia who turn-over the (2) small heat-sealed sachets of suspected shabu[30] be marked as “E-1”.

x x x x.”

Thereafter, nothing followed relating to the marking of the confiscated illegal drugs. To observe, it was the forensic chemist who stated[31] that the two confiscated illegal drugs were marked “RAH1” and “RAH2”.

Granting for a moment that it was PO2 Lanaza who marked the confiscated dangerous drugs, did he mark them in the presence of the accused-appellant? And if he marked them, then his name should have been included in the Chain of Custody Form; for how could he have marked the confiscated illegal drugs if he did not have them in his custody even for that purpose only?

(2) identity of the photographer

According to PO3 Rebadomia, PO2 Ian Libo-on photographed the confiscated items, thus -

“Q: Who is the photographer?

A: PO2 Ian Libo-on.”[32]

However, in the Certificate of Inventory,[33] PO2 Roberto Roy Lanaza appears to be the photographer and, PO2 Ian Libo-on, the seizing officer. So, who between these two police officers photographed the confiscated items?

In any case, whoever between PO2 Libo-on and PO2 Lanaza photographed the confiscated items must have had custody thereof, even for a few moments only. Such that the name of the photographer should have been mentioned in the Chain of Custody Form.

But if the Chain of Custody Form is to be given full credence, then it is only PO3 Rebatomia who could have

photographed the confiscated items, it appearing therein that prior to their turn-over to the crime laboratory it was only PO3 Rebatomia who had custody of the said items.

With these contradictions, another link is broken.

(3) unexplained delay in the submission
of the confiscated drugs

On the back portion of the Letter-Request[34] for laboratory examination dated 18 April 2011 is a note that reads,

“Prepare an explanation letter why you submit specimen/drug test (person) on 18 April 2011.

(sgd) PO2 Portos”

Somehow, PO2 Portos was concerned about the delay in the submission of the specimens and of the person of the accused-appellant, yet the prosecution did not bother to offer any explanation about such delay. (As can be gleaned from the Letter-Request, it was PO2 Joel Portos who received the specimens from PO3 Rebadomia.)

To note, the records will show that the illegal drugs were confiscated from the accused-appellant on 16 April 2011 at around 11 o'clock in the evening; but these were submitted to the laboratory for examination only on 18 April 2011 at around 1 o'clock in the afternoon. Without any explanation as to the delay, these questions are hovering our heads: Who had custody of the confiscated illegal drugs prior to their turn-over to the crime laboratory? Where were these confiscated illegal drugs kept? Who had access to where the confiscated illegal drugs were kept?

The Office of the Solicitor General (OSG) claims that the confiscated illegal drugs were in the custody of the PNP Silay City. But who in particular or what office in the PNP Silay City had actual custody thereof?

In any case, PO3 Rayjay Rebadomia testified that he turned-over the confiscated illegal drugs to the police station -

“Q:

When you saw that there were 2 suspected shabu included in the items he handed to you right at the place where he got caught?

A:

Yes in that area he handed to us the items including two (2) sachets of shabu.

Q:

Then what happened next?

A:

I turn over to the police station.”[35]

Thus far, in the Chain of Custody Form, there are only two (2) custodians, namely: PO3 Rayjay Rebadomia and PO2 Portos. Verily, another question has come up: to whom did PO3 Rebadomia turn-over the confiscated illegal drugs at the police station?

So many relevant questions still remain to be answered.

Significantly, the crime laboratory is open on Saturdays and Sundays and that it conducts its business even on these days as testified to by the forensic chemist. Viz -

“Q:

Mr. Witness, do you aware that April 18 is a Monday?

A:

It is reflected in the calendar.

Q:

So April 16 is a Saturday?

A:

Yes, Ma'am.

Q:

So you hold office during Saturday?

A:

Yes, Ma'am.

Q:

How about Sunday?

A:

Yes, Ma'am.

Q:

Do you conduct drug test during Sunday,

A:

Yes, ma'am, as necessary.”[36]

so why did the police officers fail to submit the confiscated illegal drugs to the crime laboratory on the same day or a few hours after confiscation?

Yet again, another break in the link.

As it is, there is now a lack of an assurance that the integrity and evidentiary value of the illegal drugs were preserved. Even on this ground alone, acquittal of the accused-appellant is in order.

WHEREFORE, the appeal is GRANTED, the Decision dated 30 July 2012 of the Regional Trial Court, 6th Judicial Region, Branch 69, Silay City in Crim. Case No. 8215-69 convicting the accused-appellant for “Violation of Section 11(3), Article II of Republic Act No. 9165 is hereby REVERSED and SET ASIDE. The accused-appellant, Ronnie Hilado y Andrada alias “Kid Ronnie”, is ACQUITTED.

Let a copy of this decision be furnished to the Director of Prisons of the New Bilibid Prisons in Muntinlupa City. The said Director of Prisons is DIRECTED to immediately RELEASE said accused-appellant from custody unless he is being lawfully held for some other cause, and to inform this court on the action taken to enforce this decision within five (5) days from receipt hereof.

SO ORDERED.

Abella Maxino, P.A., and Francisco, R.C., JJ., concur.

[1] Original Records, pp. 163-169.

[2] Original Records, 3-4.

[3] Information dated April 20, 2011, Original Records, pp. 1-2.

[4] Certificate of Arraignment dated 9 May 2011, Original Records, p. 17.

[5] Original Records, pp. 175-176.

[6] *People of the Philippines v. Antolin Cuizon y Ortega, Steve Pua y Clofas alias "Stephen Po y Uy" or "Tommy Sy" and Paul Lee y Wong alias "Paul Leung"*, G.R. No. 109287, April 18, 1996. Citing Section 2, Article III, 1987 Constitution; Section 3 (2), Art. III, 1987 Constitution; Sec. 12, Rule 126, Rules of Court; Cf. Separate Opinion of Chief Justice Andres R. Narvasa in *People vs. Malmstedt*, 198 SCRA 401, 415, June 19, 1991; Cf. *People vs. Burgos*, 144 SCRA 1, September 4, 1986; *Nolasco vs. Ernani Cruz-Paño*, 147 SCRA 509, January 30, 1987; and *Vide People vs. Aminnudin*, 163 SCRA 402, July 6, 1988).

[7] *En Banc. People of the Philippines v. Mikael Malmstedt*, G.R. No. 91107, June 19, 1991, 198 SCRA 401.

[8] TSN dated August 15, 2011, p. 4.

[9] *People of the Philippines v. Rolando S. Delos Reyes, alias "Botong" and Raymundo G. Reyes, alias "mac-Mac"*, G.R. No. 174774, August 31, 2011.

[10] *En Banc. People of the Philippines v. Rosario Molina y Manamat*, G.R. No. 133917, February 19, 2001, 404 Phil. 797.

[11] *People of the Philippines v. Chua Ho San @ "Tsay Ho San"*, G.R. No. 128222, June 17, 1999, 367 Phil 703.

[12] *En Banc. People of the Philippines v. Florencio Doria y Bolabo and Violeta Gaddao y Catama @ "Neneth"*, G.R. No. 125299, January 22, 1999.

[13] G.R. No. L-74869, July 6, 1988, 163 SCRA 402.

[14] G.R. No. 87059, June 22, 1992, 210 SCRA 174.

[15] *People of the Philippines v. Roel Encinada*, G.R. No. 116720, October 2, 1997.

[16] *En Banc. Sammy Malacat y Mandar v. Court of Appeals and the People of the Philippines*, G.R. No. 123595, December 12, 1997, 283 SCRA 159.

[17] TSN of August 15, 2011, pp. 9-10.

[18] *Id.*, p. 11.

[19] *Supra* at note 7.

[20] *Gilbert Zalameda vs. People of the Philippines*, G.R. No. 183656, September 4, 2009. Citing *People of the Philippines vs. Marilyn Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430

[21] *People of the Philippines vs. Gomer S. Climaco*, G.R. No. 199403, June 13, 2012. *People vs. Alcuizar*, G.R.

No. 189980, 6 April 2011, 647 SCRA 431.

[22] *People of the Philippines vs. Freddy Salonga y Afiado*, G.R. No. 194948, September 2, 2013. *People of the Philippines vs. Guzman*, G.R. No. 186498, March 26, 2010, 616 SCRA 652.

[23] *Supra* at note 10. Citing *Mallillin vs. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619; *People vs. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791; *People vs. Sammy Umipang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324; [*People vs. Dolera*], G.R. No. 180693, September 4, 2009, 598 SCRA 484; and *People vs. Morales*, G.R. No. 172873, March 19, 2010, 616 SCRA 223, citing *People vs. Orteza*, G.R. No. 173051, 31 July 2007, 528 SCRA 750.

[24] G.R. No. 186948, March 26, 2010, 616 SCRA 652.

[25] Dangerous Drugs Board Regulation No. 1, s. (2002).

[26] *People of the Philippines v. Salvador y Bal Verde and Dory Ann Parcon y Del Rosario*, accused, Glenn Glenn Salvador y Balverde, Accused-appellant, G. R. No. 190621, February 10, 2014. Citing *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295.

[27] *People of the Philippines vs. Arnold Martinez, et. al.*, G.R. No. 191366, December 13, 2010.

[28] Exhibit “E”, Original Records, p. 128.

[29] TSN of August 15, 2011, p. 6.

[30] TSN of February 28, 2012, pp. 5-9.

[31] TSN of October 10, 2011, p. 4.

[32] TSN of August 15, 2011, p. 6.

[33] Exhibit “D”, Original Records, p. 127.

[34] Exhibit “C”, Original Records, p. 126.

[35] TSN of August 15, 2011, pp. 4-6.

[36] TSN of October 10, 2011, p. 9.

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