PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARET SALCENA Y VICTORINO, ACCUSED-APPELLANT.

G.R. No. 192261. November 16, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the February 9, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02894, which affirmed the July 10, 2007 Decision[2] of the Regional Trial Court, Branch 103, Quezon City, (RTC) in Criminal Case No. Q-05-134553, finding accused Garet Salcena y Victorino (Salcena) guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentencing her to suffer the penalty of life imprisonment and ordering her to pay a fine of P500,000.00.

In the Information[3] dated May 24, 2005, Salcena, together with a certain Arlene Morales Armas (Armas), was charged with illegal sale of shabu, the accusatory portion of which reads:

> That on or about the 19th day of May, 2005, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero four gram (0.04) of Methylamphetamine hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.

When arraigned, both Salcena and Armas entered a plea of "NOT GUILTY"[4] to the offense charged. After pre-trial was terminated, trial on the merits ensued. The prosecution presented the testimonies of Barangay Security Development Officer (BSDO) Ronnie Catubay (Catubay), the poseur buyer; BSDO Elmer Esguerra (Esguerra); and Forensic Chemist Filipinas Francisco Papa (Papa). The defense, on the other hand, presented the lone testimony of Salcena.

The Version of the Prosecution

The People's version of the incident has been succinctly recited by the Office of the Solicitor General (OSG) in its Brief[5] as follows:

> In the afternoon of May 19, 2005, an informant reported to the barangay tanods of Barangay San Antonio, SFDM, Quezon City, namely, Ronnie Catubay and Elmer Esguerra, that appellant "Garet" was selling illegal drugs. Responding to the report, the barangay tanods met in the afternoon and plotted an entrapment against appellant. Barangay tanods Catubay and Esguerra were assigned to act as poseur buyer and given a marked P100.00 bill by the barangay chairman. Thereafter, at around 5:20 p.m., the team proceeded to No. 23 Paco Street, SFDM, Quezon City.
>
> Upon arriving at the entrapment place, Catubay and Esguerra went to appellant and asked if they could buy

> shabu. Appellant handed to Catubay a plastic sachet containing shabu and in return received the P100 marked money. At this point, Catubay immediately arrested appellant and recovered from her the marked money. Just as appellant was apprehended, another woman (identified in court as Arlene M. Armas), ran from the scene, prompting the tanods to arrest her. The two women were brought to the BSDO office of the barangay hall of Barangay San Antonio for recording purposes. After which, they were taken to the PNP Headquarter in Camp Karingal in Quezon City.
>
> Forensic Chemist Filipinas Francisco Papa of the CPD Crime Laboratory conducted the test on the specimen submitted and the result yielded positive for methamphetamine hydrochloride.[6]

After the prosecution had formally offered its evidence and rested, co-accused Armas filed a demurrer to evidence anchored on the ground that the evidence adduced by the prosecution failed to meet that quantum of proof necessary to support her criminal conviction for the offense charged. On March 15, 2006, the RTC granted the demurrer and dismissed the charge against Armas.[7]

The Version of the Defense

In her Brief,[8] Salcena denied that she was caught, in flagrante, selling shabu and claimed that she was just a victim of a frame-up. Her version of the events that transpired in the afternoon of May 19, 2005 is diametrically opposed to that of the prosecution. Thus:

> On May 19, 2005, at around 10:00 o'clock in the morning, GARET SALCENA and Arlene Armas were on board a tricycle en route to Pantranco. Before they were able to reach their destination, two (2) barangay tanods stopped their tricycle and asked them to step out.
>
> Subsequently, the duo were invited to the barangay hall where they were bodily frisked by a female barangay tanod. After they were frisked, the lady tanod said, "negative ito." Despite this, however, a male tanod said, "kahit na negative yan, positive yan."
>
> Consequently, a plastic sachet was taken from the table of one of the tanods and "planted" as evidence against the accused. The duo was subsequently brought to the Camp Karingal police station.
>
> She vehemently denied the accusations against her.[9]

The Decision of the RTC

On July 10, 2007, the RTC rendered judgment convicting Salcena for illegal sale of 0.04 gram of shabu. The trial court rejected her defenses of denial and frame-up and accorded weight and credence to the collective testimonies of barangay tanods, Catubay and Esguerra. The decretal portion of the RTC Decision reads:

> ACCORDINGLY, judgment is rendered finding the accused GARET SALCENA y VICTORINO GUILTY of violation of Section 5 of R.A. 9165 (for pushing shabu) as charged and she is sentenced to suffer a jail term of LIFE IMPRISONMENT and to pay a fine of P500,000.00.
>
> The shabu in this case weighing 0.04 gram is ordered transmitted to the PDEA thru DDB for disposal as per RA 9165.
>
> SO ORDERED.[10]

The Decision of the CA

On appeal, the CA affirmed the conviction of the accused on the basis of the testimonies of Catubay and Esguerra which it found credible and sufficient to sustain the conviction. The CA was of the view that the presumption of regularity in the performance of official duty in favor of the barangay tanods was not sufficiently controverted by

Salcena. It stated that the prosecution was able to establish the elements of the crime of illegal sale of dangerous drugs as well as the identity of Salcena as its author. The appellate court rejected the defense of frame-up for her failure to substantiate the same.

Moreover, the CA held that the apprehending team properly observed the procedure outlined by Section 21 of R.A. No. 9165 and that the integrity and evidentiary value of the subject shabu was duly preserved. The appellate court also sustained the RTC in holding that Salcena's constitutional right to counsel was never impaired as she was adequately represented and assisted by a counsel at all stages of the trial proceedings. The dispositive portion of the CA Decision dated February 9, 2010 reads:

> WHEREFORE, in view of the foregoing, the appealed Decision dated July 10, 2007 of the Regional Trial Court (RTC), Branch 103, Quezon City in Criminal Case No. Q-05-134553 convicting accused-appellant of the violation of Section 11, article II of R.A. No. 9165 and sentencing her to Life Imprisonment and to pay a fine of P500,000.00 is hereby AFFIRMED.
>
> SO ORDERED.[11]

On February 22, 2010, Salcena filed a Notice of Appeal[12] which the CA gave due course in its Minute Resolution[13] dated March 17, 2010.

In the Resolution dated July 2, 2010, the Court required the parties to file their respective supplemental briefs. The parties, however, manifested that they had exhausted their arguments before the CA and, thus, would no longer file any supplemental brief.[14]

The Issues

Insisting on her innocence, Salcena ascribes to the RTC the following errors:

> I
>
> THE TRIAL COURT VIOLATED THE ACCUSED-APPELLANT'S CONSTITUTIONAL RIGHT TO COUNSEL.
>
> II
>
> THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.
>
> III
>
> THE TRIAL COURT ERRED IN RENDERING A JUDGMENT OF CONVICTION DESPITE THE FACT THAT THE CHAIN OF CUSTODY OF THE ALLEGED SHABU WAS NEVER ESTABLISHED.

Salcena contends that the prosecution failed to prove her guilt beyond reasonable doubt. She avers that both the RTC and the CA were mistaken in giving undue credence to the testimonies of Catubay and Esguerra as well as in upholding the validity of the alleged buy-bust operation. She decries that she was a victim of a frame-up claiming that a barangay tanod merely planted the subject shabu on her for the purpose of harassing her. She adds that the omission of the two barangay tanods to observe the procedure outlined by Section 21 of R.A. No. 9165 impaired the prosecution's case. She assails the prosecution for its failure to establish the proper chain of custody of the shabu allegedly seized from her. Also, she submits that her acquittal is in order in the light of the denial of her basic constitutional rights to counsel and to due process.

The OSG, on the other hand, counters that the culpability of Salcena for the crime of illegal sale of shabu was

proven beyond reasonable doubt. It alleges that contrary to her stance, she was afforded with adequate and effective legal representation at all stages of the trial. It avers that there was proper coordination with the Philippine Drug Enforcement Agency (PDEA) before the buy-bust operation was conducted, and that the prosecution was able to establish an unbroken and cohesive chain of custody of the confiscated narcotic substance.

The Court's Ruling:

The foregoing assignment of errors can be synthesized into: first, the core issue of whether there was a valid buy-bust operation; and second, whether sufficient evidence exists to support Salcena's conviction for violation of Section 5, Article III of R.A. No. 9165.

Prefatorily, it must be emphasized that an appeal in a criminal case throws the whole case open for review and it is the duty of the appellate court to cite, appreciate and correct errors in the appealed judgment whether they are assigned or unassigned.[15]

After a meticulous review and examination of the evidence on record, the Court finds merit in the appeal.

True, the trial court's assessment of the credibility of witnesses and their testimonies, as a rule, is entitled to great weight and will not be disturbed on appeal. This rule, however, does not apply where it is shown that any fact of weight and substance has been overlooked, misapprehended or misapplied by the trial court.[16] The case at bar falls under the above exception and, hence, a deviation from the general rule is justified.

Jurisprudence has firmly entrenched that in the prosecution for illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) the corpus delicti or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[17] Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence.

An assiduous evaluation of the evidence on record in its totality exposes flaws in the prosecution evidence which raises doubt as to its claim of an entrapment operation. Not all the elements necessary for the conviction of Salcena for illegal sale of shabu were clearly established in this case.

A buy-bust operation is a form of entrapment, which in recent years has been accepted as valid and effective mode of arresting violators of the Dangerous Drugs Law.[18] It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[19] To determine whether there was a valid entrapment or whether proper procedures were undertaken in effecting the buy-bust operation, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately established through relevant, material and competent evidence. The courts cannot merely rely on, but must apply with studied restraint, the presumption of regularity in the performance of official duty by law enforcement agents. Courts are duty-bound to exercise extra vigilance in trying drug cases and should not allow themselves to be used as instruments of abuse and injustice lest innocent persons are made to suffer the unusually severe penalties for drug offenses.[20]

The prosecution seeks to prove the entrapment operation through the testimonies of barangay tanods Catubay and Esguerra. Accordingly, the innocence or culpability of Salcena hinges on the issue of their credibility. In determining the credibility of prosecuting witnesses regarding the conduct of a legitimate buy-bust operation, the "objective" test as laid down in People v. De Guzman[21] is utilized. Thus:

> We therefore stress that the "objective" test in buy-bust operation demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the

> poseur-buyer and the pusher, the offer for purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.

Applying this "objective" test, the Court is of the considered view that the prosecution failed to present a complete picture of the buy-bust operation highlighted by the disharmony and inconsistencies in its evidence. The Court finds loose ends in the prosecution evidence, unsupported by coherent and rational amplification.

First, there are marked discrepancies between the Joint Affidavit of Arrest[22] dated May 21, 2005 (Exh. "B") executed by the barangay tanods, Catubay and Esguerra, and their testimonies before the RTC, relative to matters occurring prior to the buy-bust operation. The Joint Affidavit states that a confidential informant (CI) came to the Barangay Security and Development Office (BSDO) at around 8:00 o'clock in the morning of May 19, 2005 to inform Barangay Captain Martin Dino (Dino) about the illegal drug trade activities of Salcena and her companion, Arlene Armas; that Salcena asked the CI to look for buyers of her shabu; that Dino coordinated with the Chief of DAID-SOTG, Police Superintendent Gerardo Ratuita (P/Supt. Ratuita), who immediately formed a team to conduct a buy-bust operation against Salcena and Armas composed of a certain Police Inspector Alberto Gatus (P/Insp. Gatus) as team leader, BSDO Catubay as poseur- buyer while BSDO Esguerra and the rest of the members, who were police officers, would serve as members of the back-up team; that upon arrival of the team at the agreed meeting place in front of Palamigan store, Barangay San Antonio, the CI and Catubay waited for Salcena and Armas while Esguerra and the other team members monitored the process of entrapment from a viewing distance.

Catubay's testimony, however, was in stark contrast to the above declaration. Thus:

> Fiscal Gibson Araula
>
> (On Direct Examination)
>
> Q: Mr. Witness, do you remember where were you in the morning of May 19, 2005?
>
> A: I was at the Barangay Hall
>
> Q: What barangay is that?
>
> A: Barangay San Antonio, District 1.
>
> xxx
>
> Q: How about in the afternoon of May 19?
>
> A: In the afternoon the informant arrived at the barangay office.
>
> Q: Can you tell this Honorable Court what information that informant relayed to your office?
>
> A: According to the informant "si Garet raw po ipapaano roon, nagbebenta."
>
> Q: What do you mean by "Nagbebenta"?
>
> A: "Nagbebenta ng droga."
>
> Q: Who received that information?

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A: I and my colleague BSDO by the name of Elmer Esguerra.

xxx

Q: What was the action taken by you and your companion with respect to that information?

A: We went to the place pointed out by the informant somewhere near San Antonio, Sto. Niño Street.

Q: What time was that?

A: About 5:30 in the afternoon .

Q: Who were with you when you went there?

A: Elmer and I, sir.[23]

[Emphases supplied]

During cross-examination, Catubay maintained that he and Esguerra (not the barangay chairman) were the ones informed by the CI about the drug pushing activities of Salcena in the afternoon (not 8:00 o'clock in the morning) of May 19, 2005 and that they were the only ones who went to the place named by the CI for the conduct of the alleged buy-bust operation without the aid and support of any police operative.

Atty. Concepcion

(Cross-examination)

Q: YOU SAID ON May 19, 2005 in the afternoon, you and certain BSDO Elmer received information from confidential informant that Garet is selling shabu, mr. witness?

A: Yes sir.

Q: You and Elmer proceeded to the place where that confidential informant was telling this Garet is selling shabu, mr. witness?

A: Yes sir.

Q: With no other companion, no police officer, you conducted the buy bust operation, mr. witness?

A: Yes sir.

xxx

Q: When you decided, you and Elmer decided to conduct the buy bust operation, what preparation did you made, mr. witness?

A: We have a briefing sir.

Q: Can you tell us what the briefing all about between you and Elmer, mr. witness?

A: Ako ang bibili at siya ang huhuli po.[24]

[Emphases supplied]

What then happened to the entrapment team which was supposedly formed for the purpose of arresting Salcena red-handedly, and whose members were individually named and enumerated in the Pre-Operation Report[25] (Exh. "H")? They seemed to have suddenly vanished into thin air when the operation was about to be set into motion. Was an entrapment team really organized?

Second, Catubay and Esguerra made it appear in their joint affidavit that it was the CI who had access to Salcena and who was tasked by the latter to look for prospective buyers and to arrange for the sale and delivery of the shabu. While at the witness stand, however, these two barangay tanods claimed that they directly approached Salcena and bought shabu from her without the intervention and participation of the CI. Should it not have been the CI, who was the conduit to the pusher, who should have arranged for such a meeting?

The Court finds it hard to believe that these two barangay tanods were able to pick the propitious time to be in front of the Palamigan store, Barangay San Antonio, to consummate the alleged sale with Salcena who conveniently appeared thereat. It must be stressed that neither Catubay nor Esguerra testified that the CI arranged the time of the meeting with the alleged drug pusher and, yet, they astoundingly guessed the time that Salcena would turn up on the scene.

Third, another slant that nags the mind of the Court is the confused narration of prosecution witness Catubay anent how the sale occurred. The Court finds it hard to believe the testimony of Catubay on the transaction he had with Salcena:

> Fiscal Araula:
>
> (On Direct Examination)
>
> Q: When you arrived at that place what happened there?
>
> A: I myself was intending to buy from Garet.
>
> Q: Where?
>
> A: “Sa harap ng palamigan doon sa No. 32 yata.”
>
> Q: Where you able to talk to that person at that time?
>
> A: I did not, I was not able to talk to her.
>
> Q: You were not able to talk to her at that time?
>
> A: Yes, sir.
>
> xxx
>
> Q: When the two of you were not able to talk to Garet, what did you do, if any?
>
> A: I was intending to buy shabu.
>
> Q: To whom?
>
> A: Garet and I did not talk to each other since I was buying shabu “nagkaabutan lang ho kami.”
>
> xxx
>
> Q: In other words you were able to talk to Garet?
>
> Court:
>
> “Abutan lang daw, walang usapan.”
>
> xxx
>
> Q: How about the money you mentioned between the two of you that person you mentioned Garet, what is the first, the money you gave to Garet or Garet gave you the shabu?

A: Garet first gave the shabu and I gave her the money.

Q: Now when you said that you received the shabu in exchange to (sic) P100.00 bill, what did you do after?

A: After I got the shabu we immediately arrested Garet.[26]

xxx

Q: Now, you said that you arrested Garet at that time, how about your c0-BSDO officer, where was he?

A: In my right side.[27]

[Emphases Supplied]

Not even the barest conversation took place between the poseur-buyer and the alleged drug peddler. Catubay, along with Esguerra, approached Salcena and then the latter instantly handed over to him a small heat-sealed transparent plastic containing suspected shabu. In turn, Catubay gave Salcena a ?100.00 bill. Thereafter, the barangay tanod arrested Salcena. The situation was simply ludicrous.

The Court is not unaware that drug transactions are usually conducted stealthily and covertly and, hence, the parties usually employed the "kaliwaan system" or the simultaneous exchange of money for the drugs. Still, it baffles the mind how Salcena knew exactly who between Catubay and Esguerra would buy shabu, and how much would be the subject of the transaction despite the absence of an offer to purchase shabu, through words, signs or gestures, made by either of the two tanods. Evidence to be believed must not only proceed from the mouth of a credible witness but it must also be credible in itself such that common experience and observation of mankind lead to the inference of its probability under the circumstances.[28] Catubay's story of silent negotiation is just not credible. It simply does not conform to the natural course of things.

Fourth, equally damaging to the cause of the prosecution is the confusion that marks its evidence as to who confiscated the buy-bust money and from whom it was seized. It was stated in both the Investigation Report[29] submitted by P/Supt. Ratuita and the Joint Affidavit of Arrest that it was Esguerra who confiscated the buy-bust money from the right palm of Armas because, allegedly, immediately after receiving the ?100.00 bill, Salcena passed the money to Armas. Catubay, however, claimed that he recovered the buy-bust money from Salcena herself.

Q: Likewise when you arrested Garet where was the buy-bust money, the ?100.00 bill?

A: I also got the money from Garet.

Q: Where in particular, what part of her body?

A: Right pants pocket of her "pantalon".

Court:

You mean to say you put your hand inside her pocket?

A: Yes, your Honor.[30]

The foregoing conflicting narrations and improbabilities, seemingly trivial when viewed in isolation, cast serious doubt on the credibility of the prosecution witnesses when considered together. Unfortunately, they were glossed over by the RTC and the CA invoking the presumption that barangay tanod Catubay and Esguerra were in the regular performance of their bounden duties at the time of the incident. It should be stressed, however, that while the court is mindful that the law enforcers enjoy the presumption of regularity in the performance of their duties,

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this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself, constitute proof of guilt beyond reasonable doubt.[31] The attendant circumstances negate the presumption accorded to these prosecution witnesses.

Viewed vis-à-vis the peculiar factual milieu of this case, it is pertinent to mention the ruling in the case of People v. Angelito Tan[32] that courts are mandated to put the prosecution evidence through the crucible of a "severe testing" and that the presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused. In the case at bench, the prosecution evidence, when placed under "severe testing," does not prove with moral certainty that a legitimate buy-bust operation was conducted against Salcena.

Moreover, the Court finds the prosecution fatally remiss in establishing an unbroken link in the chain of custody of the allegedly seized shabu. Thus, doubt is engendered on whether the object evidence subjected to laboratory examination and offered in court is the same as that allegedly sold by Salcena.

Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the corpus delicti – the body of the crime whose core is the confiscated illicit drug.[33] Hence, every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[34]

In People v. Kamad,[35] the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

These links in the chain of custody were not adequately established by the testimonies of the prosecution witnesses and the documentary records of the case. It is significant to note that the testimonies of poseur-buyer Catubay and his back-up, Esguerra, lack specifics on the post-seizure custody and handling of the subject narcotic substance. Although Catubay testified that he seized the small plastic sachet containing the suspected shabu from Salcena and brought it to the BSDO office, he never disclosed the identity of the person/s who had control and possession of the shabu at the time of its transportation to the police station. Neither did he claim that he retained possession until it reached the police station.

Furthermore, the prosecution failed to supply vital details as to who marked the sachet, where and how the same was done, and who witnessed the marking. In People v. Martinez,[36] the Court ruled that the "marking" of the seized items, to truly ensure that they were the same items that enter the chain and were eventually the ones offered in evidence, should be done (1) in the presence of the apprehended violator; and (2) immediately upon confiscation – in order to protect innocent persons from dubious and concocted searches and to shield the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft.

Records show that both the RTC and the CA agreed in holding that it was Catubay who marked the plastic sachet containing the subject shabu. The RTC wrote:

> x x x. In passing, the court is satisfied that the plastic sachet at bench was properly identified. Tanod Esguerra said he saw Tanod Catubay put markings thereon and remembers the letters "RC" which letters appear on the sachet. Tanod Catubay recalls that he marked the sachet but could not remember if it is "RC" or "GV."[37]

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> Excerpts from the assailed CA Decision on this score is hereto quoted, to wit:
>
> xxx. Esguerra remembered that Catubay marked the plastic sachet with the initials “RC” and Catubay, on the other hand, cannot remember if the markings he made is “GB” or “RC.”[38]
>
> xxx. In the instant case, it was shown to the satisfaction of the Court that when the sale transaction was consummated, the shabu was first handed-over to the poseur-buyer, who placed the necessary markings in the confiscated items.[39]

A perusal of the pertinent Transcript of Stenographic Notes, however, shows that these observations are not reflected. Contrary to the findings of the RTC and CA, there is nothing on record that Esguerra made a categorical declaration that he saw Catubay put the marking “RC” on the plastic sachet. All that he testified to was that he could identify the subject shabu because it had the marking “RC.”[40] Neither was there any statement from Catubay that he placed markings on the plastic sachet of shabu right after seizing it from Salcena. In fact, Catubay claimed that he could not remember whether the marking was “RC” or “GV.” Thus:

> Atty. Concepcion:
>
> (On Cross- Examination)
>
> Q: You identified the buy bust money because of the initial GB, am I correct to say that, Mr. witness?
>
> A: I could not recall if it is RC or G[V] sir.
>
> Q: Why can’t you remember, RC or G[V], what is the relation, Mr. witness?
>
> A: RC refers to Ronnie Catubay sir.
>
> Q: G[V]?
>
> A: I don’t know what it means sir. [41]

Verily, the records of the case do not provide for the identity of the officer who placed the marking “RC GVS 5-19-05” on the plastic sachet containing the allegedly confiscated shabu and whether said marking had been done in the presence of Salcena.

It is likewise noteworthy that the prosecution evidence is wanting as to the identity of the police investigator to whom the buy-bust team turned over the seized item; as to the identity of the person who submitted the specimen to the Philippine National Police (PNP) Crime Laboratory; as to whether the forensic chemist whose name appeared in the chemistry report was the one who received the subject shabu when it was forwarded to the crime laboratory; and as to who exercised custody and possession of the specimen after the chemical examination and before it was offered in court. Further, no evidence was adduced showing how the seized shabu was handled, stored and safeguarded pending its offer as evidence in court.

While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange.[42] Accordingly, each and every link in the custody must be accounted for, from the time the shabu was retrieved from Salcena during the buy-bust operation to its submission to the forensic chemist until its presentation before the RTC. In the case at bench, the prosecution failed to do so.

Lastly, the subject 0.04 gram of shabu was never identified by the witnesses in court. Neither BSDO Catubay nor BSDO Esguerra was confronted with the subject shabu for proper identification and observation of the uniqueness of the subject narcotic substance when they were called to the witness stand because at that time, the subject shabu was still in the possession of the forensic chemist as manifested by Assistant City Prosecutor Gibson

Araula, Jr.[43] They were not given an opportunity to testify either as to the condition of the item in the interim that the evidence was in their possession and control. Said flaw militates against the prosecution's cause because it not only casts doubt on the identity of the corpus delicti but also tends to discredit, if not negate, the claim of regularity in the conduct of the entrapment operation. The records bare the following:

> Fiscal Gibson Araula
>
> (On Direct Examination)
>
> Q: If the transparent plastic sachet is shown to you, can you identify that transparent plastic sachet?
>
> A: Yes, sir. That is the one we got from her so we can remember it.
>
> Q: Other than that you mentioned the one that you recovered, you cannot identify the shabu other than what you mentioned now?
>
> A: "Makikilala po."
>
> Q: How will you know that that is the shabu?
>
> A: I knew it "yun ang nahuli naming."
>
> Fiscal Araula:
>
> By the way your Honor the shabu was in possession of the chemist. I'm going to reserve the right to identify the shabu, your Honor.
>
> Court:
>
> Okay, granted.[44]
>
> x x x.
>
> Esguerra testified on this matter, as follows:
>
> Q: The two accused were arrested at that time. What happened after that?
>
> A: We brought them to Camp Karingal and turned them over together with the evidences.
>
> Q: You said you were able to turn over the shabu and the money. Can you identify that shabu and the money?
>
> A: Yes, sir.
>
> Q: Why?
>
> A: Because it has a marking, sir.
>
> Q: What was the marking there that your companion was able to buy shabu from Garet at that time, what marking was placed?
>
> A: "RC"
>
> Q: How about the money?
>
> A: "RC din po sir."
>
> Fiscal Araula: Your Honor, may we reserve the right to present the transparent plastic sachet?
>
> Court: Okay, granted.[45]

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Despite the reservation of the right, the prosecution never presented the transparent plastic sachet for identification by the two barangay tanods.

In view of the loopholes in the prosecution evidence as well as the gaps in the chain of custody, there is no assurance that the identity and integrity of the subject narcotic substance has not been compromised. In Catuiran v. People,[46] the Court held that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of shabu, and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflicted with every proposition relative to the culpability of the accused.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proved. Concededly, the evidence for the defense is weak and uncorroborated and could even engender belief that Salcena indeed perpetrated the crime charged. This, however, does not advance the cause of the prosecution because its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[47] The prosecution has the burden to overcome the presumption of innocence and prove the guilt of an accused beyond reasonable doubt.

In the light of the failure of the prosecution evidence to pass the test of moral certainty, a reversal of Salcena's judgment of conviction becomes inevitable. Suffice it to say, a slightest doubt should be resolved in favor of the accused.[48] In dubio pro reo.[49]

WHEREFORE, the appeal is GRANTED. The February 9, 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02894 is hereby REVERSED and SET ASIDE. Accordingly, accused Garet Salcena y Victorino is hereby ACQUITTED of the crime charged against her and ordered immediately RELEASED from custody, unless she is being held for some other lawful cause.

The Superintendent of the Correctional Institution for Women is ORDERED to forthwith implement this decision and to INFORM this Court, within five (5) days from receipt hereof, of the date when Salcena was actually released from confinement.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perez,[*] JJ., concur.

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[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

[1] Rollo, pp. 2-20.

[2] Penned by Judge Jaime N. Salazar, Jr.; CA rollo, pp. 12-16.

[3] Records, pp. 1-2.

[4] Id. at 38.

[5] CA rollo, pp. 57-75.

[6] Id. at 62-64.

[7] Records, pp. 72-74.

[8] CA rollo, pp. 29-46.

[9] Id. at 34.

[10] Id. at 16.

[11] Id. at 99.

[12] Id. at 100-101.

[13] Id. at 104.

[14] Rollo, pp. 30-36.

[15] People v. Balagat, G.R. No. 177163, April 24, 2009, 586 SCRA 640, 644-645.

[16] People v. Baga, G.R. No. 189844, November 15, 2010, 634 SCRA 743, 749.

[17] People v. De la Cruz, G.R. No. 177222, October 29, 2008, 570 SCRA 273, 283.

[18] People v. Agulay, G.R. No. 181747, September 26, 2008,566 SCRA 571, 594.

[19] People v. Concepcion, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 439.

[20] Valdez v. People, G.R.No. 170180, November 23, 2007, 538 SCRA 611, 633.

[21] G.R. No. 151205, June 9, 2004, 431 SCRA 516, citing People v. Doria, 361 Phil. 595, 621 (1999).

[22] Records, pp. 6-7.

[23] TSN, November 30, 2005, pp. 3-7.

[24] TSN, December 14, 2005, pp. 5-7.

[25] Records, p. 14.

[26] TSN, November 30, 2005, pp. 8-12.

[27] Id. at 14.

[28] People v. Manambit, 338 Phil. 57, 91(1997).

[29] Records, pp.4-5.

[30] TSN, November 30, 2005, pp. 14-15.

[31] People v. Magat, G.R. No. 179939, September 29, 2008, 567 SCRA 86, 99.

[32] 432 Phi. 171, 198 (2002).

[33] People v. Pagaduan, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 322.

[34] People v. De Leon, G.R. No. 186471, January 25, 2010, 611 SCRA 118, 132.

[35] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

[36] G.R. No. 191366, December 13, 2010, 637 SCRA 791, 818.

[37] CA rollo, p. 16.

[38] Id. at 84.

[39] Id. at 97.

[40] TSN, November 30, 2005, p. 36.

[41] TSN, December 14, 2005, p. 8.

[42] People v. Almorfe, G.R. No. 181831, March 29, 2010, 617 SCRA 52, 61-62.

[43] TSN, November 30, 2005, p. 19 and 37.

[44] Id. at 15-19.

[45] Id. at 35-37.

[46] G.R. No. 175647, May 8, 2009, 587 SCRA 567, 580.

[47] People v. Santos, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 505.

[48] People v. Milan, 370 Phil. 493, 506 (1999).

[49] Latin legal maxim which literally means “when in doubt, for the accused.”

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