PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHARLIE SORIN Y TAGAYLO, ACCUSED-APPELLANT.

G.R. No. 212635. March 25, 2015

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Charlie Sorin y Tagaylo (Sorin) assailing the Decision[2] dated February 27, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00953-MIN, which affirmed in toto the Judgment[3] promulgated on August 3, 2011 of the Regional Trial Court of Misamis Oriental, Branch 25 (RTC) in Criminal Case No. 2005-694, finding Sorin guilty beyond reasonable doubt of violating Section 5, Article II[4] of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

In an Information[5] dated November 7, 2005, Sorin was charged before the RTC for violating Sections 5 and 15,[6] Article II of RA 9165, viz.:

> The undersigned assistant provincial prosecutor hereby accuses CHARLIE SORIN y TAGAYLO for the crime of VIOLATION OF SEC. 5 & 15 OF ARTICLE II of R.A. NO. 9165, committed as follows:
>
> That on or about 8:20 in the evening of November 2, 2005 at Amoros, El Salvador, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above named accused , without authority of the law, did then and there willfully, unlawfully and feloniously sell two (2) sachets containing white crystalline substance positive to [sic] the presence of METHAMPHETAMINE HYDROCHLORIDE (SHABU), a dangerous drug, with a combined weight of 0.12 gram to a poseur-buyer for Four Hundred Pesos (PHP400.00) in violation of Section 5, Article II of Republic Act 9165.
>
> Contrary to law.

According to the prosecution, on November 2, 2005,[7] the Philippine National Police (PNP) intelligence section chief of El Salvador, Misamis Oriental received a report that Sorin was selling illegal drugs at his residence in Barangay Amoros, El Salvador, Misamis Oriental. Prior to this date, or on October 25, 2005, a test-buy was conducted by the PNP where Sorin sold illegal drugs to a civilian asset. As a result, Police Chief Inspector Rolindo Soguillon (PCI Soguillon) formed a buy-bust team composed of PO2 Edgardo Dador (PO2 Dador) and PO1 Sonny Adams Cambangay (PO1 Cambangay), as poseur-buyers, and PO3 Edilberto Estrada, SPO1 Graciano Mugot, Jr. (SPO1 Mugot),[8] SPO1 Samuel Madjos, and SPO2 Elias Villarte, as back-up team. The poseur-buyers were provided with four (4) one hundred peso bills as marked money.[9]

At around 7:30 in the evening, the buy-bust team proceeded to the target area. PO2 Dador and PO1 Cambangay approached Sorin's residence, knocked on the door, and were eventually let in. They asked if they could buy shabu, and Sorin responded that each sachet costs P200.00. PO2 Dador offered to purchase two (2) sachets. After

examining said sachets, each containing white crystalline substance, PO2 Dador gave Sorin the P400.00 marked money. PO2 Dador then tapped Sorin on the shoulder, brought him outside the house where he and the rest of the buy-bust team introduced themselves as police officers, and arrested Sorin. The latter was then brought to the police station.[10]

At the police station, PO2 Dador turned over the seized items and the marked money to SPO1 Mugot, who marked the same, prepared the inventory and request for laboratory examination, and sent the seized items to the PNP Crime Laboratory.[11]

The PNP Crime Laboratory tested the following items: (a) the sachets seized from Sorin during the buy-bust operation for the presence of illegal drugs; (b) Sorin's hands and the marked money used to purchase the aforementioned illegal drugs for ultraviolet fluorescent powder; and (c) Sorin's urine for the presence of illegal drugs. The seized sachets tested positive for shabu,[12] while Sorin's hands and the marked money used contained traces of ultraviolet fluorescent powder.[13] Also, Sorin's urine tested positive for the presence of shabu.[14]

For his part, Sorin claimed that the sachets of shabu were planted by the police officers, and that no buy-bust operation occurred on November 2, 2005. Sorin maintained that on the alleged date of the buy-bust operation, while he was resting at his residence with his wife and three (3) children, he heard someone calling from outside but ignored it. Afterwards, PO2 Dador and PO1 Cambangay barged in by forcibly opening the door to his house, handcuffed him, and then searched his house without a warrant. Thereafter, he was brought to the police station where he was photographed with the shabu supposedly seized from his residence. He was also compelled to sign a document which turned out to be a waiver consenting to the test on his urine for traces of drugs. Sorin further stated that PCI Soguillon promised to release him after taking his picture, but he was brought instead to the Provincial Prosecutor's Office where he was charged of selling shabu.[15]

During trial, the defense presented the testimonies of Rhiza Jane A. Lopez (Lopez) and Enriquita De Paira (De Paira) to corroborate Sorin's assertions. Lopez testified that she (upon the request of Sorin's wife and with the use of her mobile phone) photographed the door of Sorin's residence, which she claimed was destroyed. In a similar light, De Paira testified that on the evening of November 2, 2005, she passed by Sorin's residence and saw two (2) persons kicking the door of the latter's house and after destroying the same, gained entry therein. She then heard Sorin's wife and children scream. After several minutes, the two (2) persons with Sorin left and boarded a van.[16]

The RTC Ruling

In a Judgment[17] promulgated on August 3, 2011, the RTC found Sorin guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and accordingly, sentenced him to Life Imprisonment and ordered him to pay a fine in the amount of P500,000.00.[18]

In convicting Sorin, the RTC gave credence to the straightforward and categorical testimonies of the police officers that a buy-bust operation took place where the seized items and the marked money were recovered and marked, and that when the seized sachets were transmitted to the PNP Crime Laboratory, the same tested positive for methamphetamine hydrochloride. Moreover, Sorin's hands and the marked money similarly tested positive for ultraviolet fluorescent powder. The RTC also declared that the prosecution was able to account for every link in the chain of custody of the seized items. Conversely, it gave no weight to the testimony of Sorin, who merely denied the existence of the buy-bust operation, and those of his two (2) witnesses which did not refute its occurrence.[19]

However, the RTC declared the results of the laboratory examination of Sorin's urine inadmissible as evidence, considering that his consent to the examination was obtained without the assistance of counsel. Consequently,

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Sorin was acquitted of the charge of violating Section 15, Article II of RA 9165.[20]

Aggrieved, Sorin appealed[21] his conviction before the CA.

The CA Ruling
In a Decision[22] dated February 27, 2014, the CA affirmed Sorin's conviction in toto.[23]

It agreed with the RTC's finding that a valid buy-bust operation, resulting in the seizure of two (2) sachets containing shabu, had occurred, and that, notwithstanding the police officers' lapses in complying with the procedure enshrined in Section 21, Article II of RA 9165, the identity and integrity of the corpus delicti, or the seized drug itself, were nevertheless preserved. Finally, the CA opined that Sorin failed to rebut by clear and convincing evidence the presumption of regularity in the performance of official duties enjoyed by the police officers involved in the buy-bust operation.[24] Thus, Sorin's conviction was sustained.

Undaunted, Sorin filed the instant appeal.[25]

The Issue Before the Court

The issue for the Court's resolution is whether or not Sorin's conviction for violation of Section 5, Article II of RA 9165 should be upheld.

The Court's Ruling
The appeal is meritorious.

In order to convict an accused charged with violating Section 5, Article II of RA 9165, the prosecution must be able to prove beyond reasonable doubt: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.[26]

Accordingly, it is of paramount importance for the prosecution to establish that the transaction actually took place, and to present the corpus delicti, i.e., the seized drug/s, before the court.[27]

Similarly, it must be shown that the integrity and evidentiary value of such seized items have been preserved. In other words, the dangerous drug presented in court as evidence against an accused must be the same as that seized from him. The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed.[28] In People v. Viterbo,[29] citing People v. Cervantes[30] the Court had occasion to elaborate on the requirement's rationale:

> In every prosecution for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must concur: (a) the identities of the buyer and seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it. As the dangerous drug itself forms an integral and key part of the corpus delicti of the crime, it is therefore essential that the identity of the prohibited drug be established beyond reasonable doubt. Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the corpus delicti. Elucidating on the custodial chain process, the Court, in the case of People v. Cervantes, held:
> As a mode of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. X X X.

The chain of custody requirement "ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."[31] (Emphases and underscoring supplied)

As to its procedural mechanics, Section 21,[32] Article II of RA 9165 requires that: (a) the apprehending team that has initial custody over the seized drugs immediately conduct an inventory and take photographs of the same in the presence of the accused or the person from whom such items were seized, or the accused's or the person's representative or counsel, a representative from the media, the Department of Justice, and any elected public official who shall then sign the copies of the inventory; and (b) the seized drugs be turned over to the PNP Crime Laboratory within 24 hours from its confiscation for examination purposes.

Note that while the "chain of custody rule" demands utmost compliance from the aforesaid officers, Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165[33] as well as jurisprudence, nevertheless provides that non-compliance with the requirements of this rule will not automatically render the seizure and custody of the items void and invalid, so long as: (a) there is a justifiable ground for such non-compliance; and (b) the evidentiary value of the seized items are properly preserved. Hence, any deviation from the prescribed procedure must be justified, but, at all times, should not affect the integrity and evidentiary value of the confiscated items.[34]

In this case, the Court finds that the prosecution failed to establish the identity of the substance allegedly confiscated from Sorin due to unjustified gaps in the chain of custody, thus warranting his acquittal.

Records bear out that PO2 Dador, i.e., the apprehending officer who seized the sachets from Sorin during the buy-bust operation conducted on November 2, 2005, failed to mark the same and, instead, turned them over unmarked to SPO1 Mugot[35] who was the one who conducted the marking; prepared the request for laboratory examination of the seized sachets, Sorin's urine, and the marked money; delivered the said request, together with the seized sachets and marked money, to the PNP Crime Laboratory; and later received the examination results.[36] PO2 Dador had, in fact, admitted that the sachets he seized from Sorin were not even marked in his presence. As his cross-examination reveals:

Atty. Alvyn R. Lopena (Atty. Lopena): It was also in the course of that investigation by [SPO1 Mugot] that the markings on the exhibit were made, right?

> PO2 Dador: After the investigation. Sir.
>
> Q:
>
> It was only [SPOl Mugot] who made the markings of those two (2) sachets of shabu?
>
> A:
>
> Yes, Sir.
>
> Q:
>
> Because after the investigation you already left to the office [sic]?
>
> A:
>
> Yes, Sir.
>
> Q:
>
> [PO2 Dadorl, you have no personal knowledge as to the markings made by fSPOl Mugotl because you were not there when the markings were made?

A:

Yes, Sir.

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Q:

In other words [PO2 Dador], from the time you turned over the two (2) sachets of shabu, of alleged shabu that you confiscated from the possession of [Sorin] and those four (4) P100.00 bills to fSPOl Mugotl, you have no idea anymore as to the where about [sic], as to the custody of those pieces of evidence, thereafter?

A:

Yes, Sir.

x x x x x x x x x[37] (Emphases and underscoring supplied)

Further, during his re-cross examination, PO2 Dador reiterated that he did not place any markings on the sachets of shabu or the marked money, to wit:

Atty. Lopena: [PO2 Dador], you said that you turned over the two (2) sachets of shabu that you confiscated from the possession of [Sorin] [to SPOl Mugot], before you turned over [the sachets of shabu], did you place any identifying markings on the sachet?

PO2 Dador: I did not place any [markings], Sir.

x x x x x x x x x[38]

For his part, SPOl Mugot testified that he accompanied the back-up members of the team while PO2 Dador and POl Cambangay transacted with Sorin. He stayed 200 meters away from Sorin's residence, and later saw the poseur-buyers return with Sorin in tow.[39] At the police station, PO2 Dador handed to him the two (2) sachets of shabu and the marked money used during the transaction.[40] SPO1 Mugot stated that he did not mark the sachets seized from Sorin. He marked, instead, the "transparent plastic cellophane" wherein he placed the seized sachets to wit:

Pros. Azis: You also mentioned about the [sic] 2 sachets of shabu which [PO2 Dador] handed to you. Are these the same 2 sachets of shabu which [PO2 Dador] handed to you?

SPO1 Mugot: Yes, Ma'am, but I placed that in a transparent plastic cellophane with marking Exhibit "A".

Q: Are you referring to this transparent plastic cellophane?

A: Yes, Ma'am.

Q: Were you the one who made the marking on this transparent plastic cellophane?

A: Yes, Ma'am.[41]

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Atty. Lopena: So you placed the marking on the sachets itself?

SPO1 Mugot: No, it was placed in the cellophane where the sachets were placed [sic].[42] (Emphases and underscoring supplied)

The Court cannot over-emphasize the significance of marking in illegal drugs cases. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they

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are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting, or contamination of evidence.[43] Hence, in People v. Sabdula,[44] the Court acquitted the accused on the ground of failure to mark the plastic sachets confiscated during the buy-bust operation, to wit:

> How the apprehending team could have omitted such a basic and vital procedure in the initial handling of the seized drugs truly baffles and alarms us. We point out that succeeding handlers of the specimen would use the markings as reference. If at the first or earliest reasonably available opportunity, the apprehending team did not mark the seized items, then there was nothing to identify it later on as it passed from hand to hand. Due to the procedural lapse in the first link of the chain of custody, serious uncertainty hangs over the identification of the shabu that the prosecution introduced into evidence.
>
> We are not unaware that the seized plastic sachet already bore the markings "BC 02-01-04" when it was examined by Forensic Chemist Jabonillo. In the absence, however, of specifics on how, when and where this marking was done and who witnessed the marking procedure, we cannot accept this marking as compliance with the required chain of custody requirement. There was also no stipulation between the parties regarding the circumstances surrounding this marking. We note in this regard that it is not enough that the seized drug be marked; the marking must likewise be made in the presence of the apprehended violator. As earlier stated, the police did not at any time ever hint that they marked the seized drug.[45]

In this case, SPO1 Mugot admitted that he did not mark the plastic sachets which contained the seized drugs, but instead placed the marking on the "transparent plastic cellophane" wherein he placed the seized sachets. To the Court's mind, the act of marking only the cellophane and not the individual plastic sachets renders the corpus delicti highly susceptible to tampering, switching, planting, and contamination of the evidence - the very acts which the requirement of marking seeks to prevent. As the cellophane passed hands, it can now no longer be determined with certainty that its contents have remained intact, especially considering the dearth of testimony from SPO1 Mugot that the cellophane was tightly sealed or, at the very least, secured.

With these lapses unveiled from the foregoing testimonies, the Court is unconvinced that the chain of custody rule had been substantially complied with. Not only did the apprehending officer who had initial custody over the seized drugs, i.e., PO2 Dador, fail to mark the same or even witness its alleged marking, but also the officer to which the marking of the seized items was attributed to, i.e., SPO1 Mugot, himself disclaimed that he had done such marking and admitted that he only marked a transparent plastic cellophane container, and not the individual sachets PO2 Dador had turned-over to him containing the seized drugs themselves. Thus, there is no gainsaying that the integrity and evidentiary value of the corpus delicti had been compromised.

It is well-settled that in criminal prosecutions involving illegal drugs, the presentation of the drugs which constitute the corpus delicti of the crime calls for the necessity of proving with moral certainty that they are the same seized items.[46] The lack of conclusive identification of the illegal drugs allegedly seized from the accused strongly militates against a finding of guilt,[47] as in this case. Therefore, as reasonable doubt persists on the identity of the drugs allegedly seized from the accused, the latter's acquittal should come as a matter of course.

WHEREFORE, the appeal is GRANTED. The Decision dated February 27, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 00953-MIN is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Charlie Sorin y Tagaylo is ACQUITTED of the crime of violation of Section 5, Article II of Republic Act No. 9165. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held for any other reason.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-De Castro, Bersamin, and Perez, JJ., concur.

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[1] See Notice of Appeal dated March 14, 2014. Rollo, pp. 17-18.

[2] Id. at 3-16. Penned by Associate Justice Renato C. Francisco with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring.

[3] Dated July 8, 2011. CA rollo, pp. 33-47. Penned by Presiding Judge Arthur L. Abundiente.

The pertinent portion of Section 5, Article 11 of RA 9165, entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (July 4,2002), provides:

SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

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[5] Records, pp. 2-3. See also rollo, p. 4 and CA rollo, p. 33.

[6] Section 15 of RA 9165 provides:

SEC. 15. Use of Dangerous Drugs. - A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00): Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section II of this Act, in which case the provisions stated therein shall apply.

[7] Erroneously dated as "November 5, 2002" in some parts of the records.

[8] "Paciano" or "Taciano" in some parts of the records.

[9] Rollo, p. 5.

[10] Id. at 5-6.

[11] Id. at 6. See also CA rollo, pp. 38-39.

[12] Records, p. 8.

[13] Id. at 10.

[14] Id. at 9.

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[15] Rollo, pp. 6-7. See also CA rollo, pp. 40-41.

[16] CA rollo, pp. 42-43.

[17] Id. at 33-47.

[18] Id. at 46-47.

[19] See id. at 44-46.

[20] Id. at 44.

[21] Id. at 12-32.

[22] Rollo, pp. 3-16.

[23] Id. at 15.

[24] See id. at 8-15.

[25] Id. at 17-18.

[26] See People v. Almodiel, G.R. No. 200951, September 5, 2012, 680 SCRA 306 316.

[27] See id.

[28] See id. at 323-324.

[29] See G.R. No. 203434, July 23, 2014.

[30] 600 Phil. 819, 836 (2009).

[31] People v. Viterbo, supra note 34; citations omitted.

[32] The pertinent portions of Section 21 of RA 9165 read:

> SEC. 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 Laboratoiy Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination.
>
> x x x x x x x x x

[33] See IRR ofRA 9165, Section 21.

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[35] People v. Viterbo, supra note 33, citing People v. Martinez, 652 Phil. 347, 372 (2010).

[36] See Transcript of Stenographic Notes (TSN), May 20, 2007 pp 18-19.

[36] TSN, July 15,2007, pp. 20-27.

[37] TSN, May 20, 2007, 49-51.

[38] Id. at 59.

[39] See TSN, July 15, 2007, pp. 10-14.

[40] See id. at 16-17.

[41] Id. at 18.

[42] TSN July 31, 2007, p. 6.

[43] People v. Salonga, G.R. No. 194948, September 2, 2013, 704 SCRA 536, 545, citing People v. Coreche, 612 Phil. 1238, 1245 (2009).

[44] See G.R. No. 184758, April 21, 2014.

[45] See id.

[46] See People v. Viterbo, supra note 34, citing People v. Almorfe, 631 Phil. 51, 60 (2010).

[47] Mallillin v. People, 576 Phil. 576, 593 (2008).

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