

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GENER VILLAR Y POJA, ACCUSED-APPELLANT.

G.R. No. 215937. November 09, 2016

Ponente: PEREZ, J.

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PEREZ, J.:

The subject of this appeal is the 24 January 2014 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00476, affirming the 20 December 2005 Decision[2] of the Regional Trial Court (RTC) of Bacolod City, Branch 47, finding appellant Gener Villar y Poja guilty beyond reasonable doubt of violation of Sections 5 and 12, Article II of Republic Act (R.A.) No. 9165.

Appellant was charged with the crimes of violation of Sections 5 and 12, Article II of R.A. No. 9165, in two (2) Informations, both dated 1 September 2004, which respectively read as follows:

Criminal Case No. 04-26973

That on or about the 26[th] day of August 2004, in the City of Talisay, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there, willfully, unlawfully and feloniously sell, deliver, give away to a police confidential asset in a buy-bust operation a pack of methamphetamine hydrochloride (shabu) weighing 0.06 gram, a dangerous drug, in exchange for a price of P500 in marked money bill with serial number KJ464115, in violation of the aforementioned law.[3]

Criminal Case No. 04-26974

That on or about the 26[th] day of August 2004, in the City of Talisay, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess equipment, instrument, apparatus and other paraphernalia for dangerous drugs, did then and there, willfully, unlawfully and feloniously have in his possession and under his custody and control three (3) empty plastic packets, one (1) improvised tooter, one (1) orange plastic straw all containing traces of white crystalline substance (shabu), one (1) piece colored red "kahita" and one disposable lighter fit or intended for smoking, consuming, ingesting, or introducing methamphetamine hydrochloride or shabu, a dangerous drug, into the body, in violation of the aforementioned law.[4]

Upon arraignment, appellant pleaded not guilty to both charges.

Trial ensued.

The version of the prosecution is summarized as follows:

Based on a tip from a confidential asset that there was a rampant sale of shabu at Purok Kalubihan, Zone 15 in Talisay City by a certain alias Gener, Police Chief Inspector Jerry Bartolome (C/Insp. Bartolome) of the Talisay City Police Station formed a buy-bust team composed of Police Officer (PO) 1 Loreto Santillan (PO1 Santillan),

as the poseur-buyer, Chief Intelligence Officer PO2 Jovencio Venus (PO2 Venus) and PO1 Panes. C/Insp. Bartolome produced a P500.00 bill to be used as buy-bust money. It was marked with "JCV" representing the initial of PO2 Venus. The group proceeded to Purok Kalubihan on board a tricycle, while PO1 Santillan rode his bicycle. Thereat, the asset pinpointed three persons, later identified as appellant, Jude Alyn Bawi-in (Bawi-in) and an alias Turko. PO1 Santillan approached the trio and asked if they have "stapa" a street language for stuff of shabu. PO1 Santillan handed the P500.00 marked bill to appellant. In exchange, appellant gave him one plastic sachet of shabu. Thereafter, PO1 Santillan removed the face towel wrapped around his head as the pre-arranged signal to indicate that the transaction has been consummated.[5] PO2 Venus then barged in and arrested appellant and Bawi-in. Turko was able to escape. PO1 Santillan frisked appellant. He was able to recover the P500.00 marked bill, three empty sachets with traces of shabu and an improvised tooter inside appellant's wallet, and a green lighter and orange straw inside appellant's right pocket. The seized items were marked by PO2 Venus. Appellant tried to escape but PO2 Venus overpowered him. In the process, PO2 Venus dropped one plastic sachet of shabu and eventually lost it.[6]

Appellant and Bawi-in were then brought to the police station. The items recovered were recorded in the police blotter. Chief Inspector Bartolome took a photograph[7] of the accused, as well as the items seized from them at the police station. A request was made to the PNP Crime Laboratory for examination. PO2 Venus delivered the request and the specimen to the crime laboratory.[8] The chemistry report revealed that the following specimen were tested positive for methamphetamine hydrochloride or shabu:

- One (1) heat-sealed transparent plastic packet marked "J" containing white crystalline substance weighing 0.03 gram.
- Three (3) unsealed transparent plastic packets marked "J1" through "J3" each containing traces of white crystalline substance.
- One (1) improvised tooter marked "J5" containing traces of white crystalline substance.
- One (1) orange, plastic straw marked "J4" containing traces of white crystalline substance.[9]

Bawi-in was eventually dropped from the charge when he was found negative to a drug test.

The defense gave an entirely different version of the incident.

Appellant first denied the charges against him. He narrated that he was playing basketball at a gymnasium in Purok Kalubihan at around 11:00 a.m. when he, was called by Turko, his co-worker to a nipa hut located at five (5) arms length from the basketball court. While appellant was approaching Turko, two tricycles carrying police officers arrived and arrested him and Bawi-in. Turko escaped. While on transit, appellant was manhandled by the police. He and Bawi-in were brought to the police station.[10]

Roberto Asparen (Asparen) testified that he was playing basketball with appellant when the latter was called by Turko. Five (5) minutes later, he saw two tricycles arrived and stopped in front of the nipa hut. He saw PO2 Venus and PO1 Santillan approach appellant, handcuff him from behind, and frisk him. They only recovered money from appellant. Asparen refuted the existence of a buy-bust operation. When Asparen visited appellant at the police station, PO1 Santillan approached appellant's parents to ask them to settle with PO2 Venus. On a separate occasion, appellant's parents were even asked to prepare P50,000.00 for the release of appellant but they refused.[11]

On 20 December 2005, the RTC rendered a Decision finding appellant guilty of violation of Sections 5 and 12 of R.A. No. 9165. The RTC gave credence to the testimonies of the police officers on the legitimate entrapment of appellant. The RTC disposed of the case in this wise:

WHEREFORE, finding accused Gener Villar y Poja guilty beyond reasonable doubt for Violation of Section 5 of R.A. No. 9165 (Sale of Dangerous Drugs) and of Section 12 of the same law (Possession of Equipment x x x and other Paraphernalia for Dangerous Drugs), judgment is hereby rendered imposing upon him the penalty of Life Imprisonment and a fine of P500,000.00 in Criminal Case No. 04-26973 (Sale of Dangerous Drugs), and an indeterminate penalty of Six (6) months and one (1) day, as minimum, to Two (2) years and Eight (8) months, as maximum, in Criminal Case No. 04-26974 (Possession of equipment and other paraphernalia for Dangerous Drug). He is also to suffer the accessory penalty provided by law. Costs against accused.

The 0.06 gram of methamphetamine hydrochloride or shabu (Exh. "F-8"), being a dangerous drug; and the red wallet containing the paraphernalia for dangerous drugs (Exh. "F-1"), the orange straw (Exh. "F-2"), the improvised tooter (Exh. "F-3"), the lighter (Exh. "F-4"), and the three (3) empty sachets with traces of shabu (Exhs. "F-5" to "F-7"), which are equipment or paraphernalia for dangerous drugs, are hereby ordered confiscated and/or forfeited in favor of the Government, and are to be forthwith turned over to [the] PDEA (Philippine Drug Enforcement Agency) Provincial Office for immediate destruction.

The immediate commitment of the accused to the national penitentiary is also hereby ordered.[12]

Appellant filed an appeal before the Court of Appeals. In his Brief,[13] appellant alleged the non-compliance with the chain of custody rule when the prosecution failed to present all persons who have possibly handled the evidence in court. Appellant argues that the police officers failed to comply with Section 21 of R.A. No. 9165, specifically on the absence of barangay official or media men during the buy-bust operation and the lack of date, time and signature of the officer who made the markings on the specimen submitted for examination. Appellant essentially claims that the prosecution failed to establish beyond reasonable doubt the corpus delicti of the case.

On the other hand, the Office of the Solicitor General (OSG) counters that the integrity of the evidence had been preserved because the evidence was confiscated in a heat-sealed transparent plastic sachet and then placed in another plastic then staple-sealed. The OSG also maintains that the prosecution's non-compliance with Section 21 did not affect the integrity of the evidence.

On 24 January 2014, the Court of Appeals affirmed the RTC's Decision. The Court of Appeals found that all the elements for the crimes of illegal sale and possession of drug paraphernalias are present in this case. The Court of Appeals, likewise, held that the chain of custody was sufficiently established. Anent the defense of frame-up, the Court of Appeals applied the presumption of regularity in the performance of the police officers' duties and noted that appellant could not establish any motive why the police officers would file false charges against him.

Hence, this appeal.

We are tasked to resolve whether or not the appellant's guilt was proven beyond reasonable doubt.

In prosecutions involving illegal sale of dangerous drugs, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereto.[14]

The prosecution has duly established the identity of PO1 Santillan, as the poseur-buyer and appellant, as the seller. The object of the transaction was a plastic sachet containing shabu, weighing 0.06 gram. The consideration was the P500.00 marked money. PO1 Santillan testified that he approached appellant to buy P500.00 worth of shabu. He handed the P500.00 bill to appellant. In turn, appellant gave him one plastic sachet of shabu which consummated the sale.

The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II, R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or

introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[15]

These elements are also present in this case. The prosecution has convincingly established that appellant was in possession of drug paraphernalia such as three (3) empty plastic sachets, one (1) improvised tooter and one (1) orange plastic straw, all of which were found positive for traces of shabu. Appellant did not present any proof that he is authorized to possess the same.

Appellant questions the non-compliance with Section 21 of R.A. No. 9165, particularly the failure to conduct the buy-bust operation in the presence of a barangay official and members of media. Moreover, appellant asserts that when the items were submitted for examination, there was no indication of date, time and signature of the officer who made the markings.

Section 21 of R.A. No. 9165 provides:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(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;

Section 21 (a) and (b) of the Implementing Rules and Regulation of R.A. No. 9165 pertinently provides:

(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

First, there is nothing in the Rules which require the police officer who marked the seized items to indicate the date, time and signature on the specimen to be submitted for examination. Second, it is clear that noncompliance with the enumerated requirements in Section 21 does not automatically exonerate the accused. Upon proof that noncompliance was due to justifiable grounds and that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, the seizure and custody over said items are not, by the noncompliance, rendered void. This is the "chain of custody" rule.

In *Mallillin v. People*,^[16] the Court explained that the "chain of custody" requirement ensures that unnecessary

doubts concerning the identity of the evidence are removed. The chain of custody is constructed by proper exhibit handling, storage, labelling and recording, and must exist from the time the evidence is found until the time it is offered in evidence. Failure to prove that the specimen submitted for laboratory examination was the same one allegedly seized from accused is fatal to the prosecution's case.[17]

The following are the links that must be established in the chain of custody in a buy-bust situation: 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.[18]

PO1 Santillan had in his possession one plastic sachet containing shabu that he received from appellant during the buy-bust sale. PO2 Venus recovered three empty plastic sachets, the marked money of P500.00, an improvised tooter and an orange plastic straw from appellant. The Court of Appeals had clearly outlined the rest of the procedure to prove that there was no break in the chain of custody, thus:

The accused-appellant was immediately brought to the Talisay City Police Station for proper documentation. PO2 Venus marked the sachet of shabu sold by the accused-appellant, weighing 0.06 grams, with letter "J" which stands for Jovencio the first name of PO2 Venus. The latter said that after pictures were taken of the confiscated items, he prepared the Letter Request for Laboratory Examination. When PO2 Venus brought the letter request to the PNP Crime Laboratory together with PO1 Santillan, he also brought with him the accused-appellant and Jude Alyn Bawi-in for examination. Per Chemistry Report No. D-341-2004 conducted by Police Chief Inspector Rea Abastillas Villavicencio, who also testified in court, the specimen submitted for examination gave a positive result to Methamphetamine Hydrochloride, a dangerous drug. Police Officers Venus and Santillan identified the plastic sachet of shabu presented in court as Exhibit "F" as the one that was brought from the accused-appellant during the buy-bust operation.

We are convinced that this sachet of shabu was that which was sold by the accused-appellant to the poseur-buyer. The police had marked it before bringing it to the crime laboratory. Consequently, this sachet of shabu was examined by the forensic chemist and presented in court as evidence to prove the existence and identity of the shabu sold during the buy-bust operation. The sequence of events would show that the chain of custody has been established. In the case before Us, there was clearly no gap or missing link in the chain of custody. The integrity and the evidentiary value of the confiscated items were properly preserved by the prosecution. These circumstances when considered are adequate to prove corpus delicti of the crime of sale and delivery of dangerous drug.[19]

The defense of frame-up deserves scant consideration for failure of appellant to show any motive on the part of the police officers to falsely charge and/or testify against him.

In sum, it has been established by proof beyond reasonable doubt that appellant sold shabu. Under Section 5, Article II of R.A. No. 9165, the penalty of life imprisonment to death and fine ranging from P500,000.00 to P1,000,000.00 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. Thus, the trial court correctly imposed the penalty of life imprisonment and a fine of P500,000.00 in Criminal Case No. 04-26973.

Section 12, Article II of R.A. No. 9165 imposes the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten Thousand Pesos (P10,000.00) to Fifty Thousand Pesos (P50,000.00) upon any person, who unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and any other paraphernalia fit or intended for smoking, consuming,

administering, injecting, or introducing any dangerous drug into the body. In this case, the trial court failed to impose a fine, on top of the penalty of imprisonment, as mandated by law. We, therefore, impose a fine of P25,000.00 in Criminal Case No. 04-26974.

WHEREFORE, premises considered, the Decision dated 24 January 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 00476 which, in turn, affirmed the Decision dated 20 December 2005 of the Regional Trial Court, Branch 47, Bacolod City, in Criminal Case Nos. 04-26973 and 04-26974, is **AFFIRMED** with **MODIFICATION** in that appellant GENER VILLAR y POJA is further ordered to pay a fine of P25,000.00 in Criminal Case No. 04-26974.

SO ORDERED.

Peralta[**] (Acting Chairperson), Bersamin,[***] and Reyes, JJ., concur.
Velasco, Jr., (Chairperson), J., on wellness leave.

December 8, 2016

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on November 9, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 8, 2016 at 10:30 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[**] Acting Chairperson per Special Order dated 19 October 2016.

[***] Additional Member per Raffle dated 2 November 2016.

[1] Rollo, pp. 4-19; Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla concurring.

[2] Records, Vol. I, pp. 96-117; Presided by Judge Edgar G. Garvilles.

[3] Id. at 1.

[4] Records, Vol. II, p. 1.

[5] TSN, 3 February 2005, pp. 3-8.

[6] TSN, 9 June 2005, pp. 16-19.

- [7] Records, Vol. I, p. 64.
- [8] TSN, 9 June 2005, p. 32.
- [9] Records, Vol. I, p. 6.
- [10] TSN, 20 September 2005, pp. 3-7.
- [11] TSN, 8 November 2005, pp. 4-25.
- [12] Records, Vol. I, pp. 116-117.
- [13] CA rollo, pp. 70-88.
- [14] *People v. Montevirgen*, 723 Phil. 534, 542 (2013).
- [15] *People v. Mariano*, 698 Phil. 772, 785 (2012).
- [16] 576 Phil. 576, 587 (2008).
- [17] *People v. Bulotano*, 736 Phil. 245, 257 (2014).
- [18] *People v. Salvador*, 726 Phil. 389, 405 (2014).
- [19] Rollo, pp. 14-15.

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