

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. HASHIM ASDALI Y NASA, ACCUSED-APPELLANT.

G.R. No. 219835. August 29, 2018

Ponente: TIJAM, J.

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TIJAM, J.:

This resolves an appeal[1] from a conviction for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165,[2] otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The subject conviction was upheld by the Court of Appeals (CA) in a Decision[3] dated March 27, 2015 in CA-G.R. CR-HC No. 01023-MIN.

Hashim Asdali y Nasa (accused-appellant), was indicted for the sale and illegal possession of shabu under two separate Informations, as follows:

Criminal Case No. 5427 (20880)

That on or about September 6, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and feloniously, sell and deliver to PO1 Wifredo Bohon, PNP, who acted as poseur buyer, two (2) pieces heat- sealed transparent plastic sachet containing white crystalline substance, having a total weight 0.036 gram, which when subjected to qualitative examination gave positive result to the test for the presence of METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing the same to be a dangerous drug.

CONTRARY TO LAW.[4]

Criminal Case No. 5428 (20881)

That on or about September 6, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously, have in his possession and under his custody and control, sixteen (16) pieces heat-sealed transparent plastic sachet containing white crystalline substance having a total weight 0.368 grams, which when subjected to qualitative examination gave positive result to the test for the presence of METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing the same to be a dangerous drug.

CONTRARY TO LAW.[5]

As alleged by the prosecution, a civilian informant (CI) appeared at the Zamboanga City Police Station on September 6, 2004 and reported to Senior Police Officer 1 Amado Mirasol, Jr. (SPO1 Mirasol), team leader of the Anti-Illegal Drugs Special Operation Task Force, the illegal drug pushing activities of a certain Hashim, later identified as the accused-appellant, at Barangay Campaner, Zamboanga City.[6]

SPO1 Mirasol immediately gathered his team members, SPO1 Sergio Rivera (SPO1 Rivera), PO3 Roberto Roca, PO1 Ronald Cordero, PO1 Hilda Montuno, and PO1 Wilfredo Bobon (PO1 Bobon), including the CI, conducted a

briefing for the entrapment of accused-appellant. PO1 Bobon was designated as the poseur-buyer. SPO1 Rivera would serve as back-up. The rest of the team members were to serve as perimeter security. PO1 Bobon was given two (2) one-hundred peso bills as marked money to buy two sachets of shabu worth P200 with instructions to call SPO1 Rivera upon consummation of the sale.[7]

At 11:00 a.m. of the same day, the entrapment team proceeded to Barangay Campaner with PO1 Bohon and the CI on a single motorcycle and the rest of the team in an L-300 van. Upon arriving at the target area, PO1 Bohon and the CI walked towards the inner area of Barangay Campaner. After about 150 meters, the CI spotted accused-appellant standing near the gate of a house.[8]

The CI inquired from accused-appellant if the latter still had some shabu, pointing to PO1 Bohon as the buyer. Accused-appellant then asked for money from PO1 Bohon, who then gave the P200 marked money to accused-appellant. Upon receipt of the money, accused-appellant pulled out two plastic sachets containing white crystalline substance from his right pocket, which he handed over to PO1 Bobon.[9]

PO1 Bohon instantly grabbed accused-appellant's right arm, dialed SPO1 Rivera's mobile number per their pre-arranged signal, and introduced himself to accused-appellant as a police officer. Accused-appellant tried to evade arrest by wrestling away his arm from the grip of PO1 Bohon, but the latter got hold of accused-appellant's shirt, causing accused-appellant to stumble and fall to the ground. SPO1 Rivera arrived shortly thereafter and assisted PO1 Bohon in handcuffing accused-appellant.[10]

SPO1 Rivera frisked accused-appellant and recovered from the latter's possession the marked money and 16 more sachets of shabu inside a cigarette pack. The buy-bust team brought accused-appellant to the police station where PO1 Bohon and SPO1 Rivera marked with their initials, "WB" and "SR," the two sachets that were subject of the buy-bust operation. They similarly marked the 16 sachets that were seized in the ensuing search, before the sachets were handed over to PO3 Allan Benasing (PO3 Benasing) who also placed his own initials "AB." PO3 Benasing then prepared the request for laboratory examination and personally delivered the marked specimens to the Philippine National Police (PNP) Crime Laboratory.[11]

Upon qualitative examination conducted by Police Senior Inspector and Forensic Chemist Melvin L. Manuel (P/S Insp. Manuel), the specimens tested positive for methamphetamine hydrochloride or shabu, a dangerous drug.[12]

On the other hand, accused-appellant denies the charges against him and insists he was illegally arrested without a warrant. According to accused-appellant, he was just resting at his rented house in the interior portion of Barangay Campaner with his wife and children on September 6, 2004 at 11:00 a.m., when seven armed men in civilian clothing suddenly entered his house and asked if he knew a certain Rixon or if he had seen the said Rixon pass by. The men proceeded to search the house, but found nothing. Despite accused-appellant's protests, he was brought to the police station. He claimed he did not know why he was detained and only came to know of the charges against him at the Hall of Justice. [13]

After trial, the Regional Trial Court (RTC) of Zamboanga City, Branch 13, rendered Decision[14] on November 18, 2011, convicting accused-appellant, the dispositive portion of the Decision reads:

WHEREFORE, in light of the foregoing, this Court finds:

(1)

In Criminal Case No. 5427 (20880), [accused-appellant] "GUILTY" beyond reasonable doubt for violating Section 5, Article II of Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND (P500,000) without subsidiary imprisonment in case of insolvency; and

(2)

In Criminal Case No. 5428 (20881), [accused-appellant] "GUILTY" beyond reasonable doubt for violating Section 11, Article II of Comprehensive Dangerous Drugs Act of 2002 (R[.]A[.] 9165) and sentences him to suffer the penalty of 12 years [and] 1 day to 14 years of imprisonment and pay [a] fine of THREE HUNDRED THOUSAND PESOS (Php300,000) without subsidiary imprisonment in case of insolvency.[15]

The RTC gave more credence to the version of the prosecution and accorded the police officers, who were witnesses, the presumption of regularity in the performance of their official duties. It concluded that the guilt of accused-appellant, on both charges of sale and illegal possession of dangerous drugs, was established beyond reasonable doubt.

On appeal[16] to the CA, accused-appellant harped on the prosecution's failure to discharge their burden of proving his guilt beyond reasonable doubt, and argued that the corpus delicti was not established with moral certainty. The CA, nonetheless, affirmed the RTC Decision in its entirety through the presently assailed Decision[17] dated March 27, 2015. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is DENIED. The Decision dated 17 November 2011 of the [RTC] of Zamboanga City, Branch 13 convicting accused-appellant of violation of Sections 5 and 11, Article II of [R.A.] No. 9165 is hereby AFFIRMED in toto.

SO ORDERED.[18]

Undeterred, accused-appellant filed an Appeal.[19]

In the Resolution[20] dated October 7, 2015, this Court noted the records forwarded by the CA and informed the parties that they may file their supplemental briefs.

On November 24, 2015, through a Manifestation in lieu of Supplemental Brief,[21] the Office of the Solicitor General, on behalf of the People of the Philippines, noted that the CA had already passed upon the matters raised by accused-appellant, such that the filing of a brief before this Court is no longer necessary.

In turn, accused-appellant filed his Manifestation in lieu of Supplemental Brief,[22] dated December 15, 2015, indicating that his defences have already been amplified in his Appellant's Brief before the CA. Thus, he adopts the same to avoid a repetition of the issues and arguments already discussed.

Ruling of the Court

The elements necessary for the prosecution of illegal sale of drugs are: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[23] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the corpus delicti evidence.[24]

For illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused was in possession of an item or an object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[25]

"In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the corpus delicti of the offense." [26] "The prosecution, to prove guilt beyond reasonable doubt, must present in evidence the corpus delicti of the case." [27] Furthermore, the illegal drugs seized from the suspect must be the very same substance offered in evidence in court, as the identity of the drug must be established with the same unwavering exactitude as that required to make a finding of guilt.[28] To this end, "the chain of custody requirement ensures that unnecessary doubts respecting the identity of the evidence are minimized if not

altogether removed."[29]

In the present case, several observations jump out as red flags to be considered. The marking of the sachets allegedly recovered from accused-appellant was conducted at the police station, with no statement that it was done in the presence of accused-appellant and absent any indication as to why it was not done in the vicinity of the arrest. Furthermore, it is undisputed that no inventory of the seized drugs was made by the arresting team, nor were there photographs taken of the seized evidence, whether at the site of the arrest and seizure or at the police station. There was no media representative, elected official, or representative from the Department of Justice to witness even the initial marking of the evidence. No explanation was proffered to justify the lapses. Worse, the evidence for the prosecution yields no plausible reason for the deviation. Finally, there was no attempt to show what measures the arresting team had taken to ensure that the seized specimens subjected to laboratory testing and presented during trial were the very same substances allegedly recovered from accused-appellant.

Considering that the buy-bust team ostensibly underwent a pre-operation briefing, with ample time to prepare, it is baffling that not a single member of the arresting team could secure the presence of even a single barangay kagawad at the place of arrest and seizure. It may be recalled that other team members were assigned to secure the perimeter. Both the planning and the arrest took place at regular hours of the day. While it is alleged that accused-appellant resisted arrest, he was unarmed, alone, outnumbered, and was easily overcome. Such an incident could not have gone unnoticed by barangay officials, yet the marking of the seized drugs was not promptly conducted at or near the place of arrest and seizure, like the barangay hall. The Zamboanga City Police Station could not have been without resources to properly conduct an inventory and/or photograph the evidence.

All told, it is difficult to share the RTC and CA's conclusion, that the prosecution successfully established an unbroken chain of custody of the seized drugs conformably with Section 21,[30] Article II of R.A. No. 9165.

The law is certainly not rigid and unresponsive to challenges faced by law enforcers in making drug-related arrests. In fact, the proper procedure to be followed in Section 21(a) of R.A. No. 9165, as elaborated in its Implementing Rules and Regulations (IRR), provides:

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 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 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[.] (Emphasis ours)

In this case, however, the prosecution confuses non-compliance with substantial compliance. While Section 21, Article II of R.A. No. 9165, in relation to its IRR, anticipated that there might be instances of non-compliance,

such is allowed only for justifiable reasons and if the integrity and evidentiary value of the seized items had been duly preserved by the apprehending officers. Non-compliance is clearly not an option, as the law actually contemplates substantial compliance.

The prosecution has the burden of showing that two conditions were complied with: first, deviation was called for under the circumstances; and second, that the identity and integrity of the evidence could not have been, at any stage, compromised. These two conditions ensure that the spirit and intention of the chain of custody requirement are complied with. Viewed in this light, substantial compliance is not mere token compliance, but essentially conforms to strict compliance with the chain of custody requirement.

As discussed in *People of the Philippines v. Vivian Bulotano*:^[31]

As thus provided, noncompliance with the enumerated requirements in Section 21 of the law, 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.

x x x x

In the chain of custody, the marking immediately after seizure is the starting point in the custodial link. Thereafter, the specimen shall undergo different processes and will inevitably be passed on to different persons. Thus, it is vital that there be an unbroken link in the chain to obviate switching, "planting," or contamination of evidence, a fortiori, to segregate the marked evidence from the corpus of all other similar and related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings.

x x x x

The requirements laid down in Section 21 are not a statement of duties or a job description of the drugs law enforcement officers. It is a statement of procedure for compliance with the imperative that the thing presented as proof of violation of the law is precisely that which was confiscated or taken from the accused, recognizing the unique characteristic of illegal drugs being vulnerable to tampering, altering or substitution. When it is not followed without any justifiable reason, an acquittal of the accused results.

Thus, while minor deviations from the procedures under Republic Act No. 9165 would not automatically exonerate an accused, when there is gross disregard of the procedural safeguards prescribed in the substantive law, serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. Which is why the rule of chain of custody was included in the IRR of the law.

As the integrity of the corpus delicti of the crimes for which accused--appellant was charge has not been established, it follows that there was insufficient basis for a finding of guilt beyond reasonable doubt. For the same reason, the presumption of regularity in the performance of official duty does not hold. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.^[32] It is thus proper that accused-appellant be acquitted.

WHEREFORE, premises considered, the appeal is GRANTED. The Decision dated March 27, 2015 of the Court of Appeals in CA-G.R. CR- HC No. 01023-MIN is REVERSED and SET ASIDE. Accused-appellant Hashim Asdali y Nasa is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ORDERED immediately RELEASED from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished the Officer-in-Charge of the Bureau of Corrections, San Ramon Prison

and Penal Farm, Zamboanga City, for immediate implementation. The Officer-in-Charge of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken.

SO ORDERED.

Leonardo-De Castro, C.J., (Chairperson), Bersamin, Del Castillo, and Leonen,[*] JJ., concur.

[*] Designated additional Member per Raffle dated August 20, 2018 vice Associate Justice Francis H. Jardeleza.

[1] Rollo, pp. 14-15.

[2] 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. Approved January 23, 2002.

[3] Penned by Associate Justice Oscar V. Badelles, concurred in by Associate Justices Romulo V. Borja and Rafael Antonio M. Santos; rollo, pp. 3-13.

[4] CA rollo, p. 32.

[5] Id. at 33.

[6] Rollo, pp. 4-5.

[7] Id. at 5.

[8] Id.

[9] Id.

[10] Id.

[11] Id. at 6.

[12] CA rollo, p. 35.

[13] Id. at 19-20, rollo, p. 6.

[14] CA rollo, pp. 32-40.

[15] Id. at 39-40, rollo, pp. 6-7.

[16] CA rollo, p. 11.

[17] Rollo, pp. 3-13.

[18] Id. at 13.

[19] Id. at 14-15.

[20] Id. at 20-21.

[21] Id. at 22-24.

[22] Id. at 28-29.

[23] *People of the Philippines v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.

[24] *People v. Arenas*, 791 Phil. 601, 608 (2016).

[25] *People v. Eda*, 793 Phil. 885, 898 (2016).

[26] *Supra* note 23.

[27] *People v. Bulotano*, 736 Phil. 245, 251 (2014).

[28] *Id.* at 252.

[29] *People of the Philippines v. Richard F. Tripoli, et al.*, G.R. No. 207001, June 7, 2017.

[30] 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 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:

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[31] 736 Phil. 245 (2014).

[32] *People v. Dela Cruz*, 744 Phil. 816, 832 (2014).

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