

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MARVIN BOLADO Y NAVAL, ACCUSED-APPELLANT.

G.R. No. 227356. October 16, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

THE CASE

This appeal assails the Decision[1] dated August 28, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06627 affirming the verdict of conviction of appellant Marvin Bolado y Naval for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) and imposing on him the corresponding penalties.

THE PROCEEDINGS BEFORE THE TRIAL COURT

THE CHARGE

By Information dated July 9, 2012, appellant was charged with violation of Section 5, Article II of RA 9165, viz:

That on or about the 5[th] day of July 2012 in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to PO2 Jeffray B. Mejalla[2], 0.06 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which substance was found positive to the test for Methamphetamine Hydrochloride, also known as "shabu", a dangerous drug, in consideration of the amount of Php 300.00, in violation of the above-cited law.

CONTRARY TO LAW.[3]

The case was raffled to the Regional Trial Court (RTC)-Branch 67, Binangonan, Rizal.

On arraignment, appellant pleaded not guilty.[4] Trial proper ensued.

The Prosecution's Version

The testimonies of PO2 Jeffray Mejalla and Forensic Chemist Beaune Villaraza may be summarized, in this wise:

On July 5, 2012, at 7 o'clock in the evening, PO2 Mejalla was on duty at the Binangonan, Rizal Police Station when he received a report from a confidential agent that alias "Barok" was selling illegal drugs at Brgy. Pag-asa, Binangonan, Rizal. After the report was blotted, PO2 Mejalla informed their chief who instructed him, PO1 Jaefran Bernardino, and the confidential informant to do a surveillance on "Barok." They drove to the target place near Family Lodge Hotel, along Binangonan highway. There, the confidential informant point out to a man whom he identified as "Barok," herein appellant. They noticed several male persons were approaching appellant and they would shake hands to conceal the items being handed from one to the other.[5]

After confirming the illegal transaction, PO2 Mejalla, PO1 Bernardino, and the confidential informant returned to

the police station and coordinated with Philippine Drug Enforcement Agency (PDEA). PO2 Mejalla was assigned as poseur buyer, SPO1 Renato Membrebe, as team leader, and PO2 Froilan Quisquino, PO2 Remson Colacion, PO1 Mark Riel Canilon, and PO1 Rommel Bilos, as members. PO2 Mejalla prepared the buy-bust money, i.e. three (3) pieces of P100.00 bills which he marked "BAR-1, BAR-2, and BAR-3." [6]

The buy-bust team went back to the target place near Family Lodge Hotel. There, PO2 Mejalla and the confidential informant approached appellant who asked the confidential informant who his companion was. The confidential informant quipped: "tropa to" and then asked appellant, "meron ba tayo dyan?" Appellant asked how much he wanted to buy, to which the confidential informant replied P300.00 worth. Appellant pulled a plastic sachet containing white crystalline substance from his right pocket and asked for the payment. PO2 Mejalla gave appellant the buy-bust money while the latter handed the plastic sachet to the confidential informant. PO2 Mejalla scratched his nape to signal the buy-bust team that the illegal transaction had been consummated. [7]

PO2 Mejalla arrested appellant and introduced himself to the latter as a police officer. He frisked appellant and recovered the buy-bust money. Meantime, the confidential informant handed the plastic sachet to PO2 Mejalla who immediately marked it with "JBM." PO2 Mejalla also prepared an inventory of the seized item in the presence of media representative Tata Rey Abella. The team returned to the police station where the seized items were photographed and a request for examination was prepared. [8]

PO2 Mejalla brought the specimen and request to the Rizal Provincial Crime Laboratory which were received by Forensic Chemist Beaune Villaraza. [9] Per Chemistry Report No. D-310-12 the specimen yielded positive result for methamphetamine hydrochloride, a dangerous drug. [10]

After examination, Forensic Chemist Villaraza placed the specimen inside an envelope and kept it in a vault. The specimen was only retrieved from the same vault on the day the forensic chemist testified in court. [11]

The prosecution presented the following evidence: photocopy of the police blotter; [12] Pre-Operation Report; [13] Booking Sheet and Arrest Report; [14] Request for Laboratory Examination; [15] Request for Medical Examination of Arrested Suspect; [16] Medical Examination Result; [17] Photographs of the appellant, the seized plastic sachet containing shabu, and the buy-bust money; [18] Inventory of Evidence; [19] Sinumpaang Salaysay of the Arresting Officers; [20] and Chemistry Report No. D-310-12. [21]

The Defense's Version

On the other hand, appellant himself, Joven Carminada, and Ding Rommel Martinez testified for the defense. They narrated:

On July 5, 2012, around 7 o'clock in the morning, Ding Rommel Martinez went to appellant's house to ask if he could repair his (Martinez) front gate. Appellant agreed. Martinez gave appellant P250.00 to buy the materials from the junk shop. Appellant went to Joven Carminada's house to borrow the latter's motorcycle.

At 10 o'clock in the morning, Carminada sent appellant a text message looking for his motorcycle because he had to leave for work. Appellant replied that he met an accident. A car driven by PO1 Mike Salazar had side swept the motorcycle while they were traversing Binangonan National Highway. PO1 Salazar told appellant they should settle the matter in the police station. There, PO1 Salazar asked P5,000.00 from appellant. Appellant, however, was only able to give P3,000.00.

Appellant was not allowed to leave the police station because according to PO1 Salazar, he had a pending case and a certain PO1 Carilon was looking for him. By 12 noon, he was already detained in the police station. Thus, he could not have sold PO2 Mejalla the alleged shabu.

THE TRIAL COURT'S RULING

By Decision dated November 30, 2013, the trial court rendered a verdict of conviction.[22]

The trial court gave full credence to the testimonies of the prosecution witnesses who were police officers performing their official functions. It held that the chain of custody was observed, thus, the integrity and evidentiary value of the seized drug was properly preserved. It also rejected appellant's denial and alibi.[23]

THE PROCEEDINGS BEFORE THE COURT OF APPEALS

On appeal, appellant faults the trial court for finding him guilty as charged despite the following alleged omissions in the buy-bust operation: the confidential informant did not testify; the original buy-bust money was not presented in evidence; while the inventory took place in the place of arrest, the photographs of the seized items were taken in the police station; and, only a media representative was present during the inventory. Appellant also asserted that his warrantless arrest was illegal, thus, the items seized cannot be used against him as fruits of the poisonous tree.

For its part, the Office of the Solicitor General (OSG), through Assistant Solicitor General John Emmanuel F. Madamba and Associate Solicitor Melissa A. Santos, countered in the main: 1) the elements of illegal sale of drugs were all proven; 2) there was substantial compliance with the chain of custody rule; 3) the presumption of regularity in the performance of the police officers' official functions prevails over appellant's bare denial and alibi; and, 4) the warrantless search was a valid incident to appellant's arrest in flagrante delicto.

THE COURT OF APPEALS' RULING

In its assailed Decision dated August 28, 2015, the Court of Appeals affirmed. It found that there was substantial compliance with the chain of custody rule and the integrity of the seized drug was properly preserved. There was, therefore, no doubt that the seized dangerous drug was the same one submitted to the crime laboratory for testing and subsequently presented in court as evidence. It gave credence to the testimonies of the prosecution witnesses who as police officers were presumed to have regularly performed their official functions.

THE PRESENT APPEAL

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal. In compliance with the Court's Resolution dated November 23, 2016, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[24]

THE CORE ISSUE

Was the chain of custody complied with?

RULING

We acquit.

Appellant was charged with violation of Section 5, Art. II of RA 9165 (illegal sale of dangerous drugs) allegedly committed on July 5, 2012. The applicable law is RA 9165 before its amendment in 2014.

In cases involving violations of RA 9165, the corpus delicti refers to the drug itself. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.[25]

Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until

they are finally presented as evidence in court. This makes up the chain of custody rule.

Section 21, paragraph 1 of RA 9165 reads:

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. (Emphasis added)

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The Implementing Rules and Regulations of RA 9165, on the other hand, relevantly ordains:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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. (Emphases added)

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Based on these provisions, the chain of custody rule consists of four (4) connecting links:

One. The seizure and marking of the illegal drug recovered from the accused by the apprehending officer;

Two. The turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Three. The turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Four. The turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[26]

The first link speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and taking of photographs of the seized or confiscated drugs which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected public official.[27]

Here, while marking of the seized drug was done immediately after seizure at the place of arrest, the physical inventory and taking of photograph thereof were not done in the presence of a representative from the Department

of Justice (DOJ) and elected public official.

PO2 Mejalla testified:

Q:

Where were you when you put the markings on the plastic sachet?

A:

In the area, ma'am.

Q:

Was there an inventory of the said items?

A:

There was a copy of the inventory ma'am.

xxx xxx xxx

Q:

Who (was) present when you made this inventory?

A:

Tata Rey ma'am.

Q:

Who is this Tata Rey?

A:

A radio announcer ma'am.

Q:

Where were you when you prepared this inventory?

A:

At the area ma'am.

Q:

Was there any photos or pictures made about the items and the accused alias Barok?

A:

We're not able to take photographs at the area but on the station because we don't have a camera then ma'am.[28]

PO2 Mejalla admitted that the inventory and taking of photograph were only witnessed by a media representative. He did not mention though that a DOJ representative and a local elected official were also present during the inventory and taking of photograph. The prosecution utterly failed to acknowledge this deficiency, let alone, offer any explanation therefor. This break in the chain tainted the integrity of the seized drug presented in court.[29]

In *People v. Martin*, no DOJ representative was present during the inventory. In that case, the Court keenly noted that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the corpus delicti especially in the face of allegation of frame up.[30]

To be sure, strict compliance with the requirements under Section 21 of RA 9165 may not always be possible under various field conditions. Thus, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved,[31] viz:

Section 21. (a) x x x 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.

On this score, *People v. Jugo* specified the twin conditions for the saving clause to apply:

[F]or the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[32]

PO2 Mejalla failed to offer any explanation which would have excused the buy-bust team's stark failure to comply with the chain of custody rule. In other words, the condition for the saving clause to become operational itself was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved," will neither come into play.

Consequently, in light of the prosecution's failure to provide justifiable grounds for non-compliance with the chain of custody rule, appellant's acquittal is in order. *People v. Crispo* is apropos:

Since compliance with the procedure is determinative of the integrity and evidentiary value of the corpus delicti and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[33]

Suffice it to state that a presumption of regularity in the performance of official duty applies when nothing in the records suggests that the law enforcers deviated from the standard conduct of official duty required by law. It cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption which cannot prevail over the clear and convincing evidence to the contrary.[34] Here, the presumption was amply overturned by compelling evidence on record of the breach of the chain of custody rule.

ACCORDINGLY, the appeal is GRANTED. The Decision dated August 28, 2015 of the Court of Appeals in

CA-G.R. CR HC No. 06627 is REVERSED and SET ASIDE. Appellant Marvin Bolado y Naval is ACQUITTED in Criminal Case No. 12-0389. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release Marvin Bolado y Naval from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let an entry of final judgment be issued immediately.

SO ORDERED.

Carpio (Chairperson), Caguioa, J. Reyes, Jr., and Zalameda, JJ., concur.

[1] Penned by Associate Justice Stephen C. Cruz concurred in by Associate Justice Danton Q. Bueser and Associate Justice Eduardo B. Peralta, Jr., rollo, pp. 2-22.

[2] Also referred to as "Mejalla" in some parts of the record.

[3] Record, p. 1.

[4] Id. at 66.

[5] TSN dated September 5, 2012, pp. 5-9.

[6] Id. at 9-10.

[7] Id. at 11-13.

[8] Id. at 14-18.

[9] Id. at 19-20.

[10] Record, p. 91.

[11] TSN dated October 10, 2012, p. 10.

[12] Record, p. 11.

[13] Id. at 12.

[14] Id. at 13.

[15] Id. at 14.

[16] Id. at 15.

[17] Id. at 16.

[18] Id. at 17-19.

[19] Id. at 20.

[20] Id. at 24-27.

[21] Id. at 91.

[22] CA rollo, pp. 39-40.

[23] Id.

[24] OSG's Manifestation, rollo, pp. 29-31; Appellant's Manifestation, rollo, pp. 34-35.

[25] *People v. Victoria*, G.R. No. 238613, August 19, 2019.

[26] *People v. Burdeos*, G.R. No. 218434, July 17, 2019.

[27] *People v. Baltazar*, G.R. No. 229037, July 29, 2019.

[28] TSN dated September 5, 2012, p. 15 and 17-18.

[29] See *People v. Ismael*, 806 Phil. 21, 37 (2017).

[30] G.R. No. 231007, July 1, 2019.

[31] See Section 21 (a), Article II, of the IRR of RA 9165.

[32] G.R. No. 231792, January 29, 2018.

[33] G.R. No. 230065, March 14, 2018.

[34] *People v. Cabiles*, 810 Phil. 969, 976 (2017).

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