

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENSON TULOD Y CUARTE, ACCUSED -APPELLANT.

G.R. No. 227993. September 25, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision dated September 9, 2015[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 06622 affirming appellant's conviction for violation of Sections 5 and 11, Republic Act (RA) 9165.[2]

The Proceedings Before the Trial Court

The Charge

Under two (2) separate Informations dated April 16, 2009, appellant Benson Tulod y Cuarte was charged with violation of Sections 5 and 11, RA 9165, thus:

Criminal Case No. 84-2010

That on or about the [twelfth day] of March 2010, in the city of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and knowingly deliver to PO2 David Domingo Php 200.00 (SN-KX112694 & DZ437161) worth of Methamphetamine Hydrochloride otherwise known as "Shabu", which is dangerous drug in one (1) plastic sachet weighing 0.057 grams.

CONTRARY TO LAW

Criminal Case NO. 83-2010

That on or about the twelfth (12[th]) day of March 2010, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully and knowingly have in his effective possession and control [eight] (8) heat-sealed transparent plastic sachets containing white crystalline substance otherwise known as "Shabu" having a total weight of 0.884 grams, said accused not having the corresponding license or prescription to possess said dangerous drugs.

CONTRARY TO LAW.[3]

The case was raffled to the Regional Trial Court (RTC) - Branch 75, Olongapo City.

On arraignment, appellant pleaded not guilty to both offenses. Trial proper ensued.

During the trial, PO2 David Domingo, PO2 Lawrence Reyes[4], SPO2 Allan delos Reyes[5] and Forensic Chemist Arlyn Dacsil testified for the prosecution. Meanwhile, appellant, his mother Sonia Tulod and appellant's brother-in-law Mario Jimenez testified for the defense.

The Prosecution's Version

PO2 David Domingo, a member of the City Anti-Illegal Drugs Special Operations Team (CAIDSOT), testified that as early as February 2010, their office had been receiving reports regarding appellant's illegal drug trade in his residence at 29th Street, West Tapinac in Olongapo City. Surveillance confirmed that known drug personalities had been coming in and out of appellant's house. Thus, on March 12, 2010, around 2:30 in the afternoon, the CAIDSOT performed a buy-bust operation wherein he (PO2 Domingo) was assigned as poseur-buyer and PO2 Lawrence Reyes as back-up. That afternoon, he and the buy-bust team proceeded to the place of operation along with a confidential informant.[6]

He and the confidential informant walked towards appellant's house while the rest of the buy-bust team secured the perimeter. Appellant greeted them at the entrance. The confidential informant introduced him to appellant as an interested buyer and brief conversation ensued between them. Appellant asked where he used to buy drugs. He gave names of arrested drug dealers in response. Appellant then offered him the shabu he was selling, and he agreed to buy Php200.00 worth. Appellant took the payment and, in turn, handed him a plastic sachet containing the suspected drug which appellant retrieved from his pocket.[7]

PO2 Domingo wiped his face with a towel to signal the buy-bust team that the sale had been consummated. Consequently, members of the CAIDSOT rushed to the crime scene to arrest appellant. PO2 Reyes frisked appellant and recovered from the latter the marked money and eight (8) more transparent plastic sachets containing the suspected drugs. While at the crime scene, he marked the control buy with his initials "DSD". He turned the seized item over to the designated investigator SPO2 Allan delos Reyes at the place of operation for inventory. Subsequently, SPO2 delos Reyes prepared the request for laboratory examination and delivered the seized items to the crime laboratory.[8]

PO2 Lawrence Reyes testified that a week before the operation, he took part in the surveillance of appellant and confirmed the latter's drug activities. On March 12, 2010, he was designated as back-up for PO2 Domingo for the buy-bust operation. He witnessed the transaction between appellant and PO2 Domingo. When PO2 Domingo finally gave the pre-arranged signal, he rushed to the crime scene. He frisked appellant and recovered the marked money and eight (8) transparent plastic sachets from the latter's pockets. While there, he marked the plastic sachets with his initials "LR". He turned them over to SPO2 Allan delos Reyes at the place of operation. In turn, SPO2 delos Reyes marked the items with his initials "ADR" before preparing the inventory. Appellant, barangay official Allan Dean Haley and city prosecutor representative Jaime Navarro witnessed the inventory and photograph of the seized items. The seized items were later examined at the crime laboratory and tested positive for methamphetamine hydrochloride or shabu.[9]

SPO2 Allan delos Reyes testified to receiving the seized items at Police Station 2. By that time, said items already bore the initials of the arresting officers. He marked the seized items with his own initials, "ADR". Thereafter, he conducted an inventory of the seized items in the presence of appellant, a barangay official and representative from the city prosecutor's office. He also prepared the request for laboratory examination of the specimens and delivered them to the crime laboratory.[10]

The prosecution and defense stipulated on the testimony of Arlyn Dacsil as the forensic chemist who received and examined the seized items at the crime laboratory. Based on her examination, the specimens tested positive for methamphetamine hydrochloride or shabu.[11]

The Defense's Version

Appellant denied the charge, claiming this was a clear case of "palit-ulo ". He testified that on March 12, 2010, he was busy doing household work when four (4) police officers suddenly entered his home. They were looking for someone although he could not remember who it was. When they asked him if he owned a gun, he denied it. The

police officers, nonetheless, brought him to Police Station 2. There, he saw his kumpare Abelino Redondo in handcuffs; Redondo was apparently arrested for drug charges. The police officers showed him the drugs recovered from Redondo but the latter identified him as the owner thereof.[12]

Mario Jimenez testified that he was appellant's brother-in-law who lived with him in the same compound. At the time of the incident, he was repairing his motorcycle while appellant was in his own house, taking care of his child. He witnessed several men arrive and arrest appellant. They brought appellant out of the house and boarded him on a van.[13]

Appellant's mother Sonia Tulod also corroborated his testimony. She testified that at the time of the incident, she was in front of their house getting clothes while appellant was attending to his daughter. Suddenly, several men came to their house, went to her room, got her things and scattered them in the living room. Sonia asked why they were doing such things and they replied that her son was involved in illegal drugs. They left with the things scattered but brought appellant with them to Police Station 2. They told her to follow them there.[14]

The Trial Court's Ruling

By its Judgment dated December 2, 2013,[15] the trial court rendered a verdict of conviction, viz:

WHEREFORE, judgment is rendered as follows:

1. In Criminal Case No. 83-10, the Court finds BENSON TULOD y CUARTE GUILTY beyond reasonable doubt of Violation of Section 11, R.A. 9165 and sentences him to suffer the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of P300,000.00 plus costs, without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. 84-12, the Court finds BENSON TULOD y CUARTE GUILTY beyond reasonable doubt of Violation of Sec. 5, R.A. 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 plus cost, without subsidiary imprisonment in case of insolvency.

The accused shall also suffer the accessory penalties under Section 35, R.A. 9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The shabu sachets marked as Exhs. "I" to "I-8" of the Prosecution are ordered confiscated in favor of the government and to be disposed of in accordance with the law.

SO DECIDED.[16]

It ruled that the prosecution witnesses established the guilt of the accused through a clear and coherent narration of events. From the testimonies of these witnesses, the identities of the buyer and the seller of illegal drugs were sufficiently established, and the object and consideration of the sale were identified in court.

The testimonies of the prosecution witnesses deserved more weight and credit than those of the defense witnesses since the former conformed with documentary and object evidence. Absent any ill motive on the part of the arresting officers to falsely charge appellant, the trial court found no reason to disbelieve their testimonies.[17]

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite the failure of the arresting officers to immediately mark the seized items at the place of arrest; although appellant was arrested at his residence at 29[th] Street, West Tapinac, Olongapo City, the seized items were marked only at Police Station 2, Barangay Kababae. Too, the testimonies of the arresting officers were highly incredible. Appellant would not have openly sold illegal drugs to strangers in his residence. Illicit transactions such as drug trades are carried out

with utmost secrecy or whispers to avoid detection.[18]

The Office of the Solicitor General (OSG), through State Solicitor M. L. Carmela P. Aquino-Cagampang defended the verdict of conviction.[19] It argued that the elements of illegal sale and possession of dangerous drugs were duly established during trial. More, the prosecution had proven an unbroken chain of custody over the corpus delicti: PO2 Domingo and PO2 Reyes marked the seized items at the place of arrest; they turned over the seized items to SPO2 delos Reyes at Police Station 2 where the inventory and photograph were conducted; after which, SPO2 delos Reyes prepared the request for laboratory examination and delivered the seized items to the crime laboratory; and since both parties stipulated on the testimonies of the forensic chemist, the prosecution established the chain of custody required by law. Any purported procedural lapse is immaterial since the integrity and evidentiary value of the corpus delicti were duly preserved.[20]

The Court of Appeals' Ruling

By Decision dated September 9, 2015, the Court of Appeals affirmed.[21] It found that appellant was arrested in flagrante delicto selling dangerous drugs during a buy-bust operation. Upon appellant's arrest, PO2 Reyes conducted a body search on him which yielded eight (8) more sachets of shabu. Hence, the prosecution was able to establish the elements of the crimes charged.[22]

The alleged failure of the arresting officers to strictly comply with Section 21, RA 9165 was not fatal to the prosecution's case since they were able to establish that the integrity and evidentiary value of the seized items were duly preserved.[23]

Finally, appellant's denial cannot overcome the presumption of regularity accorded to police officers in their performance of official functions.[24]

The Present Appeal

Appellant now seeks for a verdict of acquittal from the Court.

In compliance with Resolution dated January 25, 2017, the OSG manifested that in lieu of a supplemental brief, it was adopting its brief before the Court of Appeals.[25]

On the other hand, appellant filed his Supplemental Brief,[26] adopting his brief before the Court of Appeals and raising two new arguments for his acquittal. First, the inconsistent testimonies of the arresting officers on when the seized items were turned over to SPO2 delos Reyes cast doubt on the integrity of the corpus delicti.[27] Second, no one in the right mind would sell contraband to known police officers. Here, appellant testified to knowing PO2 Domingo and PO2 Reyes even before the alleged buy-bust operation.

The Threshold Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the chain of custody over the seized items?

Ruling

We rule in the affirmative.

In illegal drugs cases, the drug itself constitutes the corpus delicti of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.[28]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[29] first, the seizure and marking 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 by the forensic chemist to the court.[30]

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.[31]

Here, appellant is charged with unauthorized sale and possession of dangerous drugs allegedly committed on March 12, 2010. The governing law, therefore, is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the corpus delicti in illegal drug cases, viz :

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)

xxxx

The Implementing Rules and Regulations of RA 9165 further commands:

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, (emphasis added)

Here, the Court acquits appellant on two (2) grounds:

First. The inconsistent testimonies of the arresting officers pertaining to where they turned over the seized items to SPO2 delos Reyes cast doubt on the integrity of the corpus delicti.

PO2 Domingo testified, thus:

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Q:

After marking the sachet of shabu with your initials, what did you do to it?

A:

We turned it over to our duty investigator, SPO2 Allan delos Reyes, ma'm.

Q:

Where did you turn over the sachet of shabu to SPO2 Allan delos Reyes?

A:

At the area of operation, (emphasis added)

xxxx

And PO2 Reyes:

xxxx

Q:

How about the 8 sachets of shabu, what did you do with them?

A:

I gave it also to SPO2 Allan delos Reyes, ma'm.

Q:

Where did you give the marked money and 8 sachets to SPO2 Allan delos Reyes?

A:

At the scene, ma'm. (emphasis added)

xxxx

SPO2 delos Reyes himself, however, denied receiving them at the place of operation, viz:

Q:

Who marked the confiscated items?

A:

The sachet of shabu that was purchased by the poseur-buyer was marked by our poseur buyer, David Sergius Domingo while the confiscated sachets of shabu was marked by PO1 Lawrence Reyes as well as the recovered marked money.

Q:

So you know what [the] Police Officers [did] to the confiscated items after marking them?

A:

Yes, ma'm.

Q:

What?

A:

They turn[ed] it over to me at Police Station "2", ma'm. (emphasis and words in brackets added)

In *People v. Alcuizar*,^[32] the Court considered the vague recollection of the arresting officers regarding the transfer of the custody of seized item -whether the investigating officer received it at the place of operation or at the police station, as a ground to acquit the accused.

Second. It is a matter of record that only appellant, barangay official Allan Dean Haley and city prosecutor representative Jaime Navarro were present to witness the inventory and photograph of the seized items. No explanation was offered for the absence of a representative from the media.

In *People v. Abelarde*,^[33] the accused was acquitted of violation of Section 5, RA 9165 because there was no evidence that the inventory of the seized dangerous drugs was done in the presence of an elected official, a media representative and a representative from the DOJ.

Similarly, in *People v. Macud*,^[34] the buy-bust team similarly failed to secure the presence of the required witnesses to the conduct of inventory of the seized drug items. For this, the Court, too, rendered a verdict of acquittal.

Indeed, the presence of the insulating witnesses during inventory is vital. In the absence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items.^[35] Non-compliance with the requirement is, therefore, fatal to the prosecution's case.

Although the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever there are justifiable grounds to deviate from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved, the prosecution offered no such explanation here. In fine, the condition *sine qua non* for the saving clause to become operational 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", too, will not come into play.^[36] Absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule, the *corpus delicti* cannot be deemed preserved.

ACCORDINGLY, the appeal is GRANTED. The Decision dated September 9, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06622 is REVERSED and SET ASIDE.

Appellant BENSON TULOD y CUARTE is ACQUITTED. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant Benson Tulod y Cuarte 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 entry of final judgment be issued immediately.

SO ORDERED.

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

[1] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizzaro and Samuel H. Gaerlan; Rollo, p. 2.

[2] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[3] Rollo, p. 3.

[4] Also appears in the records as PO1 Lawrence Reyes.

[5] Also appears in the records as SPO3 Alan delos Reyes.

[6] Record, p. 232

[7] Id.

[8] Id.

[9] Id. at 232-233.

[10] Id. at 233.

[11] Id. at 232.

[12] Id. at 233-234.

[13] Id. at 234.

[14] Id.

[15] Penned by Presiding Judge Raymond C. Viray; Record, p. 232.

[16] Record, p. 239.

[17] Id. at 235-238.

[18] CA rollo, pp. 48-50.

[19] Id. at 86.

[20] Id. at 95-101.

[21] Rollo, pp. 2-21.

[22] Id. at 8-11.

[23] Id. at 12.

[24] Id. at 14-15.

[25] Id. at 51.

[26] Id. at 33.

[27] Id. at 33-35.

[28] *People v. Jocson*, G.R. No. 199644, June 19, 2019; see also *People v. Barte*, 806 Phil. 533, 542 (2017).

[29] As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition [.]

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[30] *People v. Dahil*, 750 Phil. 212, 231 (2015).

[31] *People v. Jocson*, G.R. No. 199644, June 19, 2019; see also *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

[32] 662 Phil. 794, 808-809 (2011).

[33] G.R. No. 215713, January 22, 2018.

[34] G.R. No. 219175, December 14, 2017, 849 SCRA 294, 321.

[35] *People v. Alsarif Bintaib y Florencio*, G.R. No. 217805, April 2, 2018.

[36] *People v. Jocson*, G.R. No. 199644, June 19, 2019.

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