

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOY MARCELO Y PAGUIO, ACCUSED-APPELLANT.

G.R. No. 228893. November 26, 2018

Ponente: GESMUNDO, J.

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GESMUNDO, J.:

This is an appeal by certiorari from the Decision,[1] dated February 10, 2016, of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 06409 which affirmed the Decision,[2] dated June 26, 2013, of the Regional Trial Court (RTC) of Valenzuela City, Branch 269, finding Joy Marcelo y Paguio (appellant) guilty beyond reasonable doubt of illegal sale of methylamphetamine hydrochloride (shabu) in Criminal Case No. 985- V-11.

Antecedents

On November 10, 2011, appellant Joy P. Marcelo was charged in two (2) separate Informations for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002).

In Criminal Case No. 985-V-11. appellant was charged with violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the Information reads:

That on or about November 8, 2011 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell to PO1 JUN R. ACOSTA, who posed as buyer of zero point zero three gram (0.03) and zero point zero two gram (0.02) of Methylamphetamine Hydrochloride (Shabu), knowing the same to be dangerous drugs.

CONTRARY TO LAW.[3]

In Criminal Case No. 986-V-11. appellant was charged with violation of Section 11 of the same law. The accusatory portion reads:

That on or about November 8, 2011, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control five (5) pieces of heat-sealed transparent plastic sachets each containing zero point zero five (0.05) gram, zero point zero seven (0.07) gram, zero point zero three (0.03) gram, zero point zero two (0.02) gram, and zero point zero two (0.02) gram (sic) found to be methylamphetamine hydrochloride (shabu), knowing the same to be dangerous drugs.

CONTRARY TO LAW.[4]

Version of the Prosecution

Based on the testimonies of the police officers and the evidence presented in court, appellant was duly apprehended in a buy-bust operation conducted by the District Anti-Illegal Drugs Special Operation Task Group (DAID-SOTG) of the Philippine National Police (PNP)-Northern Police District, Caloocan City.

On November 8, 2011, at around 4:30 in the afternoon, the DAID-SOTG received information from their Regular Confidential Informant (informant) that a certain "Joy" (later on identified as appellant) was selling drugs at Arty Subdivision, Barangay Karuhatan, Valenzuela City. Immediately, Police Chief Inspector Romeo C. Ricalde, Jr. (PCI Ricalde, Jr.) designated Police Inspector Milan V. Naz (P/Insp. Naz) to head a team that would conduct a buy-bust operation against appellant. The team was composed of P/Insp. Naz, PO1 Jun R. Acosta (PO1 Acosta), PO1 Nestor D. Gonzales (PO1 Gonzales), PO3 Tapon,[5] PO1 Mark Anthony Padua (PO1 Padua), PO3 Melgan Lorenzo (now SPO1 Lorenzo), PO3 Deothele Gatdula (now SPO1 Gatdula), and SPO1 Bravo.[6] PO1 Acosta acted as the poseur-buyer and was given a marked P1,000.00 bill to be used in the operation. PO1 Nestor Gonzales (PO1 Gonzales) was designated as his back-up and arresting officer.

After coordinating with the Philippine Drug Enforcement Agency (PDEA), at around 5 o'clock in the afternoon, the team left their office onboard two private vehicles. They proceeded to Justicia St., Arty Subdivision, Valenzuela City; held a final briefing; and went around to familiarize themselves with the place. At 6:30 p.m., the team returned to the target area. PO1 Acosta, together with the informant, rode a tricycle, followed by PO1 Gonzales onboard another. The rest of the team stayed inside the two vehicles parked at a distance.

Upon reaching Justicia St., PO1 Acosta and the informant alighted from the tricycle. They saw a fair-skinned male wearing "maong" shorts and bare from the waist up, standing near his residence along Justicia St. He was carrying his child, about 3 or 4 years of age. The informant told PO1 Acosta that the man was the seller. Appellant briefly talked with the informant who introduced PO1 Acosta as a buyer, saying: "Boss Joy, byahero. " Appellant then asked PO1 Acosta how much he was buying, to which the latter replied, "Isang libo." Appellant took the marked P1,000.00 bill from PO1 Acosta and pulled out from the back of the child's diaper several plastic sachets of suspected shabu. Appellant had PO1 Acosta select two sachets and said, "Pare, hindi ka talo d'yan." PO1 Acosta got two of the plastic sachets, put them in his pocket, removed his cap (the pre-arranged signal), and ave the other police operatives a "miss-call" from his cellphone. About 30 to 40 meters away, PO1 Gonzales saw PO1 Acosta remove his cap. In turn, he gave the rest of the team a "miss-call" to signify that the sale of illegal drugs had been consummated.

When PO1 Acosta saw PO1 Gonzales approaching, he held appellant by the waistband of his shorts and introduced himself as a police officer. Appellant resisted, shouted out loud, and struggled to free himself from PO1 Acosta's hold. The rest of the police operatives arrived as PO1 Gonzales was helping PO1 Acosta contain appellant, who was trying to pull away from their grasp. Isidro Marcelo (Isidro), appellant's father, also came shouting and pushing his way towards the police officers. Isidro's physical interference caused PO1 Padua and SPO1 Lorenzo to fall to the ground (sumadsad). SPO1 Gatdula took the child away from appellant and handed her to her mother, Rosaline N. Ugto (Rosaline), appellant's live-in partner. When the child was taken away from appellant, PO1 Gonzales handcuffed him but he continued to shout and to break free (nagpupumiglas). PO1 Acosta picked up the other plastic sachets which appellant dropped to the ground. He directed appellant to bring out the P1,000.00 marked money from his left pocket.

At around 6:45p.m., a commotion ensued because neighbors, relatives, and bystanders arrived at the area and tried to intervene in the arrest of appellant. Some of the police operatives had to bring out their service firearms to deter them. Moments later, policemen from Valenzuela arrived. The situation forced the apprehending officers PO1 Acosta and PO1 Gonzales to bring appellant, together with his relatives, to the Karuhatan barangay hall. They rode in the Valenzuela police patrol vehicle. The two plastic sachets bought from appellant and the other plastic sachets he dropped while being arrested, were in PO1 Acosta's possession.

Inside the barangay hall, the police operatives waited for the designated investigator, SPO1 Fidel B. Cabinta and the barangay officials for the conduct of the inventory at the barangay hall, as instructed by SPI Ricalde. After

two to three hours of waiting for the summoned barangay officials, no one came. At around 8:50 in the evening, PO1 Acosta presented to SPO1 Cabinta the evidence he had confiscated from appellant. In the presence of SPO1 Cabinta, PO1 Acosta placed markings on the plastic sachets: "JRA-1-08-Nov 2011" to "JRA-7-08-Nov 2011" on the seven plastic sachets and "JRA" on the marked P1,000.00 bill. SPO1 Cabinta took photographs of the inventory conducted at the barangay hall. The marking of the seized items was done in the presence of appellant, his father, and live-in partner who refused to sign the inventory of confiscated/seized drugs form. Since no barangay official responded to their call or wanted to cooperate (nagtuturuan), PO1 Acosta just requested the barangay Executive Officer (Ex-O), Arsenio B. Cruz, Jr., to witness and sign the document.[7]

After the inventory, PO1 Acosta turned over to SPO1 Cabinta the evidence already marked with his initials. SPO1 Cabinta placed these items in a brown envelope and kept them in his possession when they left the barangay hall. At the DAID-SOTG station, another inventory was done. Media representative Maeng Santos, a field reporter of CAMANAVA Press, witnessed the inventory and signed the second computer-generated inventory of confiscated/seized drugs. The second inventory was also witnessed by the appellant but, again, he refused to sign the inventory receipt.

SPO1 Cabinta prepared two letter-requests, one for the laboratory examination of the contents of the seven plastic sachets, and the other for a drug test on the appellant. Both letters were signed by PCI Ricalde. At 1:40 in the morning of November 9, 2011, SPO1 Cabinta brought the letter-requests and the seven plastic sachets containing white crystalline substance to the PNP Crime Laboratory at Camp Crame, where it was received by PCI Sandra Decena-Go (PCI Decena-Go), the Forensic Chemical Officer. The plastic sachets were placed inside a brown envelope attached to the letter-request for laboratory analysis. In her Chemistry Report No. D-336-11, PCI Decena-Go stated that qualitative examination on the said specimens yielded positive for methylamphetamine hydrochloride or shabu, a dangerous drug.[8]

Version of the Defense

The defense presented as its witnesses the appellant, his friend Marina Gilda Imperial (Imperial), Rosaline, cousin Kristofer Marcelo (Marcelo), long-time neighbor Jose Macario (Macario), and sister Camella Marcelo-Bucking (Camella). Their account of what transpired on November 8, 2011 follows:

At around 5:30 to 6:30 p.m. of November 8, 2011, appellant was in front of the Marcelo Compound along Justicia St., Karuhatan, Valenzuela City, carrying his one-year and four-month old child. Rosaline, his father, cousin Kristofer, and many other persons were also in the premises. While he was talking with Rosaline and the others, two private vehicles stopped in the middle of the street. Two male persons in civilian clothes alighted from one vehicle suddenly grabbed appellant, and forcibly pulled him towards their vehicle. He resisted and asked who they were and why they were taking him. The men, who turned out to be police operatives, continued to force him towards the vehicle while releasing his hold on the child he was carrying. Rosaline tried to get their child, but the police officers pushed her away, hitting her elbow. Appellant was struck on the arm by a gun of one of the apprehending officers, which caused him to lose hold of his child. The child fell on the cemented pavement and sustained a bump or swelling.

Using a borrowed cellphone, Kristofer was able to record part of the commotion while appellant was being arrested. Meanwhile, six other companions of the apprehending officers also alighted from their vehicles and assisted in forcibly taking appellant with them. One grabbed appellant's head and pulled his hair; others held both his arms, while another held him by his shorts as they dragged him to the vehicle. Appellant struggled to free himself, and asked why they were arresting him. He was told not to fight back as he would get hurt. When his father, live-in partner, and sister asked the police officers why they were taking appellant, one of the officers

poked his firearm at them and told them not to interfere. When they resisted, they were pushed to the ground. Appellant managed to free himself from the police officers' hold and lay down under their car with his head close to the wheel.

Imperial also approached the police officers to ask why they were taking the appellant and whether they had an arrest warrant. She was told that she had no business intervening in the incident. While she was arguing with the police operatives, police officers from the Karuhatan police precinct arrived. The latter were able to convince appellant to discuss the matter at the precinct since they were already creating a disturbance and many persons had gathered around them. Thus, appellant, together with his live-in partner, sister, and cousin, were brought to the police precinct beside the Karuhatan barangay hall.

At the police precinct, the police officers refused Rosaline's request that appellant be frisked to make sure that no illegal drug was in his possession. Another policeman and one of the apprehending officers told appellant to settle the case in exchange for the amount of P100,000.00. Appellant replied that he had nothing to settle with them because he had not committed any violation. Instead, he asked them to enter the incident in the police blotter, which they refused. After the appellant, Rosaline, and their child were subjected to a medical examination, he was immediately brought back to the police precinct. He was again asked to produce money, but he still did not accede. He then overheard one of the police officers say that they were waiting for their companion to bring the evidence. After more than an hour, SPO1 Cabinta arrived. Appellant's family was asked to leave the room. SPO1 Cabinta told appellant, "Ang tigas mo kasi," and then placed shabu on top of a table. Someone also addressed appellant, saying, "Masyado ka kasing matigas kaya ito ang bagay sa iyo[.]" Appellant challenged the police officers to subject the evidence to fingerprinting, but he was told to keep quiet. He was brought to the barangay hall for the drug inventory. When no barangay official came, the arresting officers asked the barangay personnel on duty to sign a document, but they refused. One of the police officers explained that one of them should sign the document to prove that they had gone first to the barangay. A barangay tanod or Ex-O signed the document/inventory.

Appellant, accompanied by his father and Rosaline, was brought to the police station in Langaray, Caloocan City. There, another inventory was conducted in the presence of a media representative. Photographs of the appellant were also taken before he was brought to the detention cell. He was surprised when police officers informed him that he was being charged with violation of Secs. 5 and 11, Art. II of R.A. No. 9165.

Ruling of the RTC

The RTC convicted appellant for illegal sale of dangerous drugs, but held that the prosecution failed to establish his guilt for illegal possession of shabu supposedly in the five plastic sachets that appellant dropped while being arrested. The court gave full credence to the testimony of PO1 Acosta that a sale transaction actually took place between him and appellant. The police officers also satisfactorily showed that the identity and integrity of the shabu seized from appellant was adequately preserved from the time these were sold by appellant to PO1 Acosta and turned over to the crime laboratory to be examined for the presence of a dangerous drug, until it was finally presented in court.

With respect to the five other plastic sachets also containing white crystalline substance picked up by PO1 Acosta after these were allegedly dropped to the ground by appellant, the RTC found it unbelievable that appellant could still hold on to these sachets while carrying his child even as he was being pulled and pushed while fiercely resisting the arresting officers. Moreover, PO1 Acosta's testimony in court was uncertain as to how he had obtained the sachets he purportedly picked up from the ground. While PO1 Acosta was sure of the two sachets of shabu sold to him by appellant and which he took out of his pocket, he testified that he was uncertain whether

appellant held in his hand the other five sachets.

The dispositive portion of the RTC decision reads:

WHEREFORE, in Criminal Case No. 985-V-11, accused JOY MARCELO y PAGUIO is hereby found GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 and hereby imposed the penalty of life imprisonment and a fine of P500,000.00. The accused may be credited with the period that he has served under preventive imprisonment, in accordance with Article 29 of the Revised Penal Code, as amended, and applicable rules.

In Criminal Case No. 986-V-11, the accused is hereby ACQUITTED, due to insufficiency of evidence.

The Acting Branch Clerk of Court is hereby directed to turn over with dispatch the drug specimen subject of these cases to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.[9]

Appellant moved for reconsideration of the judgment insofar as it convicted him for illegal sale of shabu. The RTC denied his motion. He thus appealed to the CA.

Ruling of the CA

The CA affirmed the RTC decision. It held that the prosecution successfully established that the sale of dangerous drugs had actually taken place. It disagreed with appellant's position that the confidential informant should have corroborated the testimony of PO1 Acosta. Citing *People v. Andaya*,^[10] the appellate court said that there was no need for the prosecution to present the informant in this case as PO1 Acosta, the poseur-buyer himself, positively identified appellant as the one who sold him the two sachets of shabu.

As to the rule on the chain of custody, the CA found that the conduct of the buy-bust operation did not strictly comply with the requirements of Sec. 21 of R.A. No. 9165. Nevertheless, the CA concluded that the integrity and evidentiary value of the items seized from the appellant had been preserved. Moreover, the alleged inconsistencies or contradictions in the testimonies of the members of the buy-bust team regarding the actual arrival of SPO1 Cabinta, the manner by which appellant was handcuffed and arrested, how appellant's child was taken away from him, and the position of appellant when he was arrested are minor details that do not diminish the probative value of the testimonies at issue. Since a valid buy-bust operation actually took place and appellant was arrested in flagrante delicto, the items confiscated from him during the warrantless arrest cannot be deemed "fruits of the poisonous tree" but are admissible and competent proof of his guilt, in accordance with Sec. 13,^[11] Rule 126 of the Revised Rules of Court.

Appellant's motion for reconsideration was likewise denied by the CA.

ISSUE

WHETHER THE CA CORRECTLY UPHELD APPELLANT'S CONVICTION FOR ILLEGAL SALE OF SHABU.

Appellant's Arguments

Appellant assails the appellate court for overlooking the fact that the buy-bust team failed to comply with the requirements of Sec. 21 of R.A. No. 9165 and its Implementing Rules and Regulations (IRR). Notably, the two plastic sachets containing white crystalline substance were not marked immediately after seizure by PO1 Acosta, who opted to wait for the arrival of SPO1 Cabinta at the Karuhatan barangay hall. Neither was present a representative each from elected officials and the Department of Justice (DOJ), who are required to sign copies of

the inventory and receive a copy thereof. For compliance, though "questionable," a second inventory was conducted where a supposed media representative was present, but neither was he furnished a copy of the inventory. Three hours of waiting at the barangay hall was enough time to summon all the witnesses as required by law.

Appellant contends that because of the breaks in the chain of custody, the identity and integrity of the corpus delicti were compromised. His acquittal from the charge of sale of illegal drugs is, therefore, in order.

Appellee's Arguments

In the People's brief submitted to the CA, the Solicitor General argued that the prosecution was able to show that the buy-bust operation was properly conducted and appellant was validly arrested after being caught in flagrante delicto selling shabu to PO1 Acosta. Contrary to appellant's theory, said confidential informant need not be called to testify in court for security reasons. Moreover, the informant's testimony is neither essential for conviction nor is it indispensable, as it would merely be corroborative and cumulative.

The Solicitor General emphasized that there is no prescribed method on how a buy-bust operation is to be carried out. Police authorities are given wide autonomy to employ their own manner of apprehending drug dealers in flagrante delicto. Here, appellant neither interposed an objection to his warrantless arrest nor ascribed any irregularity on the part of the police officers prior to his arraignment. The alleged inconsistencies in the testimonies of the arresting officers pertain to minor details that do not impair or tarnish their credibility. It is important that their testimonies coincide in the essential matters, namely, the identity of appellant as the seller of the drugs and the conduct of the illicit drugs sale.

OUR RULING

The appeal is meritorious.

For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) that the corpus delicti or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[12]

The testimony of poseur-buyer PO1 Acosta established that appellant sold him two sachets of suspected shabu, a dangerous drug; and that PO1 Acosta himself handed appellant the marked P1,000.00 bill as payment.

Nevertheless, the Court has ruled that even if the prosecution had proven the illegal sale of a dangerous drug, it is still charged to prove the integrity of the corpus delicti. Thus, even if there was a sale, the corpus delicti could not be proven if the chain of custody was defective.[13]

Section 1(b) of Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002[14] defines chain of custody as follows:

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[.]

Sec. 21 of R.A. No. 9165 provides for the custody and disposition of confiscated, seized, and/or surrendered drugs

and/or drug paraphernalia. Said provision has been amended by R.A. No. 10640,[15] which took effect on July 23, 2014. Considering that the buy-bust incident in this case was conducted on November 8, 2011, and the old law was favorable to the accused, the Court shall be guided by the earlier version of Sec. 21 and its corresponding IRR, 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 supplied)

Sec. 21(a), Art. II of the IRR of R.A. No. 9165, states:

x x x x

(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 supplied)

In *People v. Salvador, et al.*, [16] the Court declared that there are links that must be established in the chain of custody in a buy-bust situation, namely: "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." [17]

The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the illegal drugs are seized up to their presentation in court as evidence of the crime. [18]

The prosecution cannot simply disregard the chain of custody in cases involving illegal sale of dangerous drugs. Notably, the marking should be made immediately after seizure of the illegal drugs. As we held in *People v. Mendoza*, [19] thus:

Based on the foregoing statutory rules, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the marking after seizure by the arresting officer,

being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. This stricture is essential because the succeeding handlers of the contraband would use the markings as their reference to the seizure. The marking further serves to separate the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence. Indeed, the preservation of the chain of custody [vis-à-vis] the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence. (Emphasis supplied)

In this case, the plastic sachets containing suspected shabu were not immediately marked at the place of arrest after the buy-bust sale. Instead, these items, which were in the possession of PO1 Acosta, were brought to the barangay hall due to the commotion during the appellant's arrest. At the barangay hall, there was further delay because the police officers had to wait for the barangay officials summoned, but in vain.

PO1 Acosta testified as follows:

Q

So, after this baby was given to the mother by another police officer, what happened next?

A

Many people arrived in the area, Sir, until they all wanted to interfere—gustong agawin po si Joy, that's why there were arguments and commotions, until the police officers from Valenzuela City arrived. We were forced to bring Joy at the Brgy. Karuhatan, Sir.

x x x x

Q

How about the two plastic sachets that were sold to you by Joy, where were they in your person while you were inside the mobile car?

A

Nakalagay po kasi sa bulsa ko 'yung nakuha ko—bale 'yung limang piraso po, kung hindi ako nagkakamali. Hinawakan ko, tapos pagdating ko sa ano I presented them to our investigator, SPO1 Cabinta, and in there I put the markings.

x x x x

Q

Now, in what place did you hand over or show this evidence to Investigator Cabinta?

A

In the barangay hall of Brgy. Karuhatan, Sir.

Q

What is the full name of this Investigator Cabinta?

A

SPO1 Fidel Cabinta, Sir.

Q

And after you showed these pieces of evidence to SPO1 Cabinta, what happened next?

A

I put markings 'JRA-1-08-2011'—his sibling and his wife were there while we were taking pictures of the evidence. But in the barangay hall, barangay officials don't want to serve as a witness, so we just fetched the Barangay Ex-O so that the inventory in the barangay will push through.

Q

On what evidence did you place the marking 'JRA-1-08-2011'?

A

On the shabu, Sir.

Q

How many?

A

Seven pieces, Sir.

Q

So, after you placed this markings "JRA" on the seven pieces of plastic sachets, what happened next?

A

'Yun nga po dahil nga po sa walang gustong tumestigo—sumama na barangay official in the barangay, we convinced Brgy. Ex-O, Cruz, Jr. —I forgot his full name—to act as a witness of the barangay.

Q

Witness to what?

A

To the inventory, Sir, we conducted our inventory there.[20](Emphases supplied)

SPO1 Cabinta confirmed that the marking, inventory, and photography of the seized evidence all took place inside the barangay hall. Two hours had lapsed after the arrest. The inventory of confiscated/seized drugs,[21] however, indicated a lapse of three hours. His testimony on the procedure taken three hours after the buy-bust operation is herein reproduced, thus:

Q

Now, at 8:50 p.m. of November 8, 2011, do you remember where you were at that time?

A

Yes, sir.

Q

Where were you then?

A

I was called by our team leader to proceed at the barangay hall of Karuhatan to conduct a drug inventory regarding the buybust operation they conducted on that day.

Q

Barangay Hall of what barangay?

A

Karuhatan, sir.

Q

You said that there was a drug inventory to be conducted, who would supervise the drug inventory?

A

I'm the one, sir.

Q

So as the supervising police officer of this inventory, can you tell us who were present when you were conducting this inventory?

A

During that time, present were the accused identified as Joy Marcelo, arresting officer PO1 Jun Acosta, the two ladies whom they identified as the wife and the other one as the sister.

COURT:

Q

Whose wife and sister?

A

Joy Marcelo, Your Honor.

x x x x

Q

There are items mentioned in Exhibit "G", seven (7) pieces small transparent plastic sachet with markings JRA-1 to JRA-7 and P1,000 bill, these items mentioned in Exhibit "G" at that time when you were writing down this inventory, where were these items placed?

A

At the table of the barangay hall of Karuhatan, sir.

Q

At the time you were writing down these entries in Exhibit "G", where was Joy Marcelo?

A

He is in the same place at the barangay hall of Barangay Karuhatan.

Q

How far was he from you?

A

Just a meter because we were facing each other in one table.

Q

Part of the records of the Honorable Court is also a document marked as Exhibit "D", could you tell us if you can identify this particular document?

A

This is the document of turned over of confiscated seized evidence done by PO1 Acosta wherein he turned over to me the confiscated evidence such as listed here and I received just after the inventory.

x x x x

Q

And you also testified that during the inventory at the barangay hall of Karuhatan, photographs were taken, who was the one who took those photographs?

A

I was the one, sir.

x x x x

Q

Calling your attention to Exhibit "S-1", could you please explain for the record what are these items depicted in this Exhibit "S-1"?

A

These are the items [wherein] the investigator marked and presented during the inventory, sir.

Q

There is someone here who is writing down something. Can you please identify this person here writing down something in Exhibit "S-1"?

A

This is PO1 Jun Acosta wherein he is putting the markings on the evidence.

Q

Since you are the one who took this photo, can you tell us what is this that PO1 Jun Acosta is writing down?

A

He is writing his initial on the evidence which he confiscated from Joy Marcelo. I remember he put his initial and the date.

Q

Would you still [be] able to remember the initials, the markings that PO1 Jun Acosta made on this Exhibit "S-1"?

A

The initial JRA, the date, November 8, 2011.

Q

There are persons shown in Exhibit "S-3", and also in Exhibit "S-4". Who are the persons shown in Exhibit "S-3"?

A

The person seated in front who is half-naked is the suspect Joy Marcelo and the person seated in front of him is PO1 Jun Acosta and the person wearing red shirt is the Ex-O of the Barangay Hall of Barangay Karuhatan.

x x x x

Q

According to this document which is also part of the records of the Honorable Court, you received the plastic sachets described in Exhibit 'D' inside barangay hall of Barangay Karuhatan at 8:15 p.m. of November 8, 2011. From the barangay hall of Karuhatan on the way to your Headquarters in Langaray, who was the one in custody of this evidence described in Exhibit "D"?

A

I'm the one, sir.[22] (Emphasis supplied)

As shown by the foregoing, the prosecution breached the first link right away when the buy-bust team failed to immediately mark the seized drugs, to conduct a physical inventory, and to photograph the same after the arrest of the appellant and the seizure of the drugs. Marking of the plastic sachets confiscated from appellant was made only after more than two hours from the time of seizure.

In the recent case of *People v. Villarta*,^[23] the Court reiterated that the chain of custody was broken when the police officer failed to mark the sachets of shabu immediately upon seizing them from the appellant. Thus:

Given the foregoing admission by the only witness to testify for the prosecution, "[i]t is evident that there was a break [a gap, or an interval] in the very first link of the chain when [this police officer] failed to mark the sachets of shabu immediately upon seizing them from the appellant." Quite clearly, this does not accord with the mandatory requirement of the law. Thus it has been held that:

The first link in the chain is the marking of the seized drug. We have previously held that:

x x x Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. 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 are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence.

It is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused.

[The reason for this marking immediately upon arrest or seizure is set forth] in *People v. Gonzales*, [thus—]

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking,

which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[24] (Emphasis supplied)

Another substantial gap in the chain of custody concerned the absence of a representative each of the media and of the Department of Justice (DOJ), and of any elected public official during the buy-bust operation and at the time of the confiscation of the dangerous drugs from the accused in the area of operation.[25]

Section 1(A.1.6) of the Chain of Custody Implementing Rules and Regulations states that "[a] representative of the [National Prosecution Service] is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected." The presence of these three (3) persons required by law can be ensured in a planned operation such as a buy-bust operation.[26]

R.A. No. 10640, which amended Sec. 21 of R.A. No. 9165, now only requires two (2) witnesses to be present during the physical inventory and the taking of photographs of the seized items, namely: (a) an elected public official and (b) either a representative from the National Prosecution Service or the media.

However, under the original provision of Sec. 21 and its IRR, which was applicable at the time the appellant committed the crime charged, the apprehending team was required to immediately conduct a physical inventory and to photograph the drugs after their seizure and confiscation in the presence of no less than three (3) witnesses. These are: (a) a representative from the media, and (b) the DOJ, and (c) any elected public official, who shall be required to sign copies of the inventory and be given a copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame-up, "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." [27]

In this case, only a barangay Ex-O, who is not an elected public official, was made a witness to the inventory conducted by SPO1 Cabinta at the barangay hall. The police officers explained that no barangay official responded to their request despite three hours of waiting at the barangay hall. A second inventory was done when the buy-bust team returned to the police station at past 9 o'clock in the evening. When queried by the court on the second inventory, SPO1 Cabinta admitted it was merely to comply with the required presence of a media representative, thus:

COURT:

Q

Mr. Witness, why did you have to conduct another inventory in your office?

A

Just for the media representative to be a witness also.

Q

Only for that reason?

A

Yes, Your Honor.[28]

The belated attendance of a media representative at the police station and the earlier inventory conducted at the barangay hall, the latter being itself a delayed activity, are highly irregular and do not at all comply with the mandate of the law. The presence of a third-party witness is imperative, not only during the physical inventory and the taking of pictures, but also during the actual seizure of items. The requirement to conduct the inventory and to take photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure.[29]

That the buy-bust operation was conducted early at around 6:30 in the evening, upon a tip-off from the confidential informant barely two hours earlier, is no excuse for failing to secure the presence of these third-party representatives. The incident took place in 2011 long after R.A. No. 9165 and its IRR had become effective. "In this light, it is judicious to conclude the possibility of seizure or arrest at nighttime and dawn had been anticipated including the likelihood of sudden receipt of information from confidential agents, hence[,] it is reasonable for the persons charged with the implementation [of the buy-bust operations] to have put a system in place to ensure compliance with the pertinent laws and regulations during such situations." [30] Under the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation [31] on specific rules and procedures for planned operations such as a buy-bust operation, the designated team leader is bound to see to it that he has the contact numbers of representatives from the DOJ, the Media, and any local elected official in the area for inventory purposes as required under Sec. 21, Art. II of R.A. No. 9165. Thus, securing the presence of these three (3) witnesses is not impossible.

In *People v. Mendoza*, [32] the Court stressed that "[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of [the seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A. No.] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

In *People v. Carlit* [33] where only a DOJ representative was present, we held that such failure of the police officers to secure the presence of a representative from the media or a barangay official raises serious doubts on whether the chain of custody was actually unbroken.

In the recent case of *People v. Alvarado*, [34] only a barangay kagawad was present during the inventory and photographing of the seized illegal drugs and paraphernalia; and the police officer who testified in court could not remember if their team leader had contacted representatives from the media and the DOJ. We held that the prosecution failed to present any justifiable ground for noncompliance with Sec. 21, Art. II of R.A. No. 9165, thus:

Indeed, the prosecution's unjustified [noncompliance] with the safeguards of the chain of custody constitutes a fatal procedural flaw that destroys the reliability of the corpus delicti.

The CA clearly disregarded the operative phrase—that the prosecution must provide "justifiable grounds" for [noncompliance], in addition to showing that the prosecution maintained the integrity of the seized item.

The appellate court further failed to take note of Sections 1(A.1.9) and 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations, which provide:

A.1.9.

Noncompliance, [a] under justifiable grounds, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items [b] provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

A.1.10.

Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented. (Emphasis supplied)

The Implementing Rules and Regulations on the chain of custody thus require that the apprehending officers not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. In this case, there was no justifiable ground given by the arresting officers for the absence of DOJ and media representatives in their Pinagsamang Salaysay. PO2 Burgos' testimony in court further highlighted the lack of justifiable ground for the buy-bust team's failure to strictly comply with the requirements of Section 21. (Additional emphasis supplied, citations omitted)

The Court has recognized the saving clause provided in the last paragraph of Sec. 21 (a), Article II of the IRR of R.A. No. 9165, such that failure to strictly comply with the said directive is not necessarily fatal to the prosecution's case. Strict compliance with the legal prescriptions of R.A. No. 9165 may not always be possible given the field conditions in which the police officers operate. However, the lapses in procedure must be recognized, addressed, and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.[35] The justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[36]

Here, the police officers did not give any explanation for the absence of representatives from the DOJ and the media during the buy-bust operation and at the actual marking, inventory, and photography of the items seized from appellant. The police officers testified that they summoned barangay officials to witness the inventory at the barangay hall but no one came so they had to persuade a barangay Ex-O for the purpose. Apparently, this was done only after the buy-bust transaction. It was not shown that the police operatives exerted efforts to contact a representative from the DOJ and the media and an elected public official prior to the operation. Neither did the conduct of a second inventory in the presence of a media representative hours later at the police station cure the defective chain of custody. Clearly, the prosecution failed to establish an unbroken chain of custody.

Recently, we reiterated in *People v. Guieb*,[37] the consequence of the failure of the prosecution to provide justifiable grounds for noncompliance with Sec. 21 of R.A. No. 9165 and its IRR, thus:

To make matters worse, the prosecution did not proffer a plausible explanation as to why there was a complete absence of an elected official and a representative from the DOJ and the media in order for the saving clause to apply. To reiterate, the law requires the presence of the enumerated witnesses — namely, an elected official, as well as a representative from the DOJ and the media - to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. Thus, considering the police officers' unjustified [noncompliance] with the prescribed procedure under Section 21, Article II of RA 9165, the integrity and evidentiary value of the seized drugs are seriously put into question.

Verily, the procedural lapse committed by the police officers, which was unfortunately unacknowledged and unexplained by the State, militates against a finding of guilt beyond reasonable doubt against the accused, as

the integrity and evidentiary value of the corpus delicti had been compromised. It is well-settled that the procedure in Section 21, Article II of RA 9165, is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. As such, since the prosecution failed to provide justifiable grounds for [noncompliance] with Section 21, Article II of RA 9165, as well as its IRR, Guieb's acquittal is perforce in order. (Emphasis supplied)

The burden of proving the guilt of an accused rests on the prosecution, which must rely on the strength of its own evidence and not on the weakness of the defense. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right, irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown.[38]

In *People v. Holgado, et al.*,[39] the Court held that "[c]ourts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving min[u]scale amounts of drugs ... [as these] can be readily planted and tampered."

In this case involving only 0.02 and 0.03 gram of shabu allegedly sold by appellant to PO1 Acosta, the Court cannot simply overlook the procedural lapses committed by the police officers. Current jurisprudence has highlighted the need to ensure the integrity of seized drugs in the chain of custody when only a minuscule amount had been allegedly seized from the accused.[40]

In the recent case of *People v. Lim*,[41] the Court held that in order to weed out early on from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, the following should be enforced as a mandatory policy:

- In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
- In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
- If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
- If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[42] (citation omitted)

For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from appellant and to prove as a fact any justifiable reason for noncompliance with Sec. 21 of R.A. No. 9165 and its IRR, the acquittal of the appellant is in order.

WHEREFORE, the appeal is GRANTED. The Decision, dated February 10, 2016, of the Court of Appeals in CA-G.R. CR.-H.C. No. 06409 is hereby REVERSED and SET ASIDE for failure of the prosecution to prove beyond reasonable doubt the guilt of appellant Joy P. Marcelo. He is accordingly ACQUITTED of the crime charged against him and ordered immediately RELEASED from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is ORDERED to implement this decision and inform this Court of the date of the actual release from confinement of the appellant within five (5) days from receipt hereof.

SO ORDERED.

Leonen, [**] (Acting Chairperson), J. Reyes, Jr., and Hernando, JJ., concur.
Peralta, J., (Chairperson), on official business.

[**] Designated as Acting Chairperson per Special Order No. 2617 dated November 23, 2018.

[1] CA rollo, pp. 128-147; penned by Associate justice Samuel H. Gaerlan and concurred in by Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla.

[2] Records, pp. 455-467; penned by Judge Emma C. Matammu.

[3] Records, p. 1; Crim. Case No. 985-V-11.

[4] Records, p. 1; Crim. Case No. 986-V-11.

[5] First name is not indicated in the records.

[6] Id.

[7] Records, pp. 19, 31-32 (Exhs. "G", "S" to "S-5"); Arsenio B. Cruz referred to as Artemio B. Cruz in other parts of the records.

[8] Id. at 83-88.

[9] Id. at 467.

[10] 745 Phil. 237 (2014).

[11] Sec . 13. Search incident to lawful arrest. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

[12] *People v. Mirondo*, 771 Phil. 345, 356 (2015); citing *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

[13] *People v. Flores, et al.*, G.R. No. 234048, April 23, 2018, citing *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[14] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

[15] An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", approved on July 15, 2014.

[16] 726 Phil. 389 (2014).

[17] Id. at 405.

[18] *People v. Magsano*, G.R. No. 231050, February 28, 2018, citing *People v. Viterbo, et al.*, 739 Phil. 593, 601 (2014).

[19] 736 Phil. 749 (2014).

[20] TSN, April 16, 2012, pp. 13, 16-17.

- [21] Records, p. 19, Exh. "G".
- [22] TSN, May 7, 2012, pp. 3-4, 6-8.
- [23] G.R. No. 217887, March 14, 2018.
- [24] Id. (citations omitted)
- [25] People v. Reyes, 797 Phil. 671, 689 (2016).
- [26] People v. Alvarado, G.R. No. 234048, April 23, 2018, citing People v. Saragena, G.R. No. 210677, August 23, 2017.
- [27] People v. Sipin, G.R. No. 224290, June 11, 2018, citing People v. Sagana, G.R. No. 208471, August 2, 2017.
- [28] TSN, May 7, 2012, p. 19.
- [29] People v. Que, G. R. No. 212994, January 31, 2018.
- [30] People v. Villarta, supra note 23.
- [31] Rule 3, Sec. 19 (A)(g).
- [32] Supra note 19 at 764.
- [33] G. R. No. 227309, August 16, 2017.
- [34] Supra note 26.
- [35] People v. Martinez, et al., 652 Phil. 347, 382 (2010), citing People v. Cervantes, 600 Phil. 819, 843 (2009).
- [36] People v. De Guzman, 630 Phil. 637, 649 (2010).
- [37] G. R. No. 233100, February 14, 2018.
- [38] People v. Sipin, supra note 27, citing Zafra, et al. v. People, 686 Phil. 1095, 1109 (2012).
- [39] 741 Phil. 78, 100 (2014).
- [40] People v. Jaafar, G.R. No. 219829, January 18, 2017, 815 SCRA 19, 33; citing People v. Holgado, et al., supra; Tuano v. People, G.R. No. 205871, September 28, 2016, 804 SCRA 319; People v. Caiz, G.R. No. 215340, July 13, 2016, 797 SCRA 26.
- [41] G.R. No. 231989, September 4, 2018.
- [42] Id.

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