

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEFFREY VICTORIA Y TARIMAN, ACCUSED -APPELLANT.

G.R. No. 238613. August 19, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This appeal[1] assails the Decision of the Court of Appeals in CA-G.R CR-H.C. No. 07849 dated June 28, 2017,[2] affirming appellant's conviction for violation of Section 5, Article II of Republic Act (RA) 9165.[3]

The Proceedings Before the Trial Court

The Charge

By Information dated January 3, 2005, appellant was charged with violation of Section 5, Article II of RA 9165, thus:

That on or about the 30[th] day of December 2004, in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law to sell any dangerous drug, did then and there willfully, unlawfully, and knowingly sell, deliver and give away to PO1 Hector D. Lico, who acted as poseur buyer, 0.03 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which was found positive to the test for Methamphetamine Hydrochloride, also known as "Shabu" a dangerous drug, in violation of the above-cited law."

CONTRARY TO LAW.[4]

The case was raffled to the Regional Trial Court (RTC) - Branch 73, Antipolo City.

On arraignment, appellant pleaded not guilty.

During the trial, PO3 Froilan Loyola, PO1 Dexter Pangilinan, PSI Lourdeliza C. Cejes, and PO1 Hector Lico testified for the prosecution. Appellant Jeffrey Victoria was the lone witness for the defense.[5]

The Prosecution's Version

PO3 Loyola testified that on December 28, 2004, acting on a confidential informant's report, P/Supt. Jaime B. Piloneo ordered his subordinate officers to conduct surveillance on a certain Jeffrey Victoria who was purportedly selling shabu at the corner of Ma. Clara St. and Ocampo St., Brgy. Sta. Ana, Taytay, Rizal. The next day, around 8 to 10 o'clock in the evening, the officers observed appellant standing in the area while several persons on motorcycles approached and made quick exchanges with him. According to the confidential informant, these were sales of shabu.[6]

On December 30, 2004, the police officers conducted a buy-bust operation with him (PO3 Loyola) as team leader,

PO1 Lico as poseur-buyer, and PO1 Pangilinan as back-up. They prepared the buy-bust money consisting of a Php 100.00 bill marked with his initials "FRL." The confidential informant also accompanied the team.[7]

At the place of operation, PO3 Loyola instructed PO1 Lico and the confidential informant to approach appellant. PO3 Loyola saw PO1 Lico hand over the buy-bust money to appellant who, in turn, turned over something to PO1 Lico. At that point, PO1 Lico gave the pre-arranged signal by lighting a cigarette.[8]

PO3 Loyola and the rest of the team immediately approached and introduced themselves as police officers. PO1 Lico gave PO3 Loyola the transparent plastic sachet which he received from appellant. PO3 Loyola asked appellant to take out the contents of his pocket and recovered from the latter the marked money. After informing appellant of his constitutional rights, the police officers brought him to the police headquarters.[9]

PO1 Pangilinan corroborated PO3 Loyola's testimony. He testified that the recovered plastic sachet was marked by the officer-on-case with the initials "RVM" at the police station.[10] Thereafter, the officers prepared a request for laboratory examination and sent the sachet to the crime laboratory.[11]

The prosecution and defense stipulated on the testimony of forensic chemist PSI Lourdeliza Cejes viz: she was assigned at the Eastern Police District Crime Laboratory Office; received a letter request dated December 31, 2004 for qualitative examination of the seized item; and conducted the qualitative examination of the seized item. PSI Cejes prepared the report showing that the confiscated item tested positive for the methamphetamine hydrochloride, a dangerous drug known as shabu.[12]

Lastly, PO1 Lico testified that he acted as poseur-buyer during the buy-bust operation. He and the confidential informant approached appellant while the rest of the team remained in the vehicle about ten to fifteen (10-15) meters away. When the two approached appellant, the latter greeted them, "O, Jay-R, kukuha ba kayo?" He responded "Oo, piso lang" referring to Php100.00 worth of shabu. Appellant then pulled out one (1) plastic sachet from his pocket and handed it to him, saying "Last na 'yan. Kukuha na lang ako." He (PO1 Lico) thereafter lit his cigarette to signal that the sale had been consummated. He introduced himself to appellant as a police officer and held the latter by his belt until other members of the team reached them. The rest of his testimony essentially corroborated PO3 Loyola's narration.[13]

On cross, PO1 Lico testified that his companions were deputized by the Philippine Drug Enforcement Agency to operate without coordination with the agency; he did not see what were exchanged between appellant and the persons on motorcycles who passed by and relied on the confidential informant's report that the transactions were sales of shabu; and they did not secure the presence of any barangay official or media to witness any part of the operation.[14] More, PO1 Lico did not know whether an inventory was conducted and who brought the specimen to the PNP Crime Laboratory. He only knew it was PO3 Loyola who handled the specimen from the area of operation until they reached the police station.[15]

The prosecution marked in exhibit the following evidence: Sinumpaang Salaysay nina PO2 Froilan R. Loyola, PO1 Hector D. Lico, PO1 Dexter B. Pangilinan; Php 100.00 bill with marking "FRL" (photocopy); Request for Laboratory Examination; Physical Sciences Report No. D-815-04E; Turned-over Letter dated January 3, 2005.[16]

The Defense's Evidence

Appellant denied the allegations against him. On December 30, 2004, around 7 o'clock in the evening, he was playing billiards at a hall three (3) streets away from E. Mateo St., Taytay, Rizal when three (3) police officers arrived. They searched the people in the place, albeit they did not have any document to justify the operation. They slapped and hit him with a pool cue before bringing him out of the billiard hall to board a tricycle. They

took him to the municipal hall and covered his face with a rag before putting him in jail. It was only during the inquest proceedings when appellant learned that he was being charged with selling drugs.[17]

The Trial Court's Ruling

As borne by its Decision dated July 15, 2015,[18] the trial court rendered a verdict of conviction, viz:

WHEREFORE, taking all the foregoing consideration, judgment is hereby rendered finding accused Jeffrey Victoria y Tariman GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, Republic Act No. 9165 and sentences him to suffer LIFE imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) pesos.

The Acting Branch Clerk of Court is directed to immediately transmit to the Philippine Drug Enforcement Agency (PDEA) the subject specimen confiscated from the accused for said agency's appropriate disposition.

SO ORDERED.[19]

It ruled that all the elements of the crime were sufficiently established and that the chain of custody was duly observed. On the other hand, appellant merely interposed a sweeping denial without presenting clear and convincing evidence to support his claim. As against the positive testimonies of the prosecution, appellant's plain denial failed.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite the prosecution's failure to establish the elements of the offense and the procedural lapses and gaps in the chain of custody,[20] viz:

First, the alleged sale of the drugs was not properly established. The supposed buy-bust money was excluded in evidence by the trial court for being a mere photocopy;[21]

Second, the arresting officers failed to mark the seized item at the place of the arrest.[22] It was the officer-on-case who marked the sachet at the police station;[23]

Third, the inventory and photograph requirements under Section 21, RA 9165 were not accomplished. PO3 Loyola even admitted that the specimen was immediately submitted to the PNP Crime Laboratory after it was marked;[24]

Fourth, the stipulation of both parties on to the testimony of PCI Cejes did not cover how the specimen was handled. Hence, the custodial chain was broken;[25] and

Finally, appellant's defenses of alibi and frame-up must stand in view of the aforesaid procedural lapses.[26]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Herman R. Cimafranca and State Solicitor Sheila Marie V. Sison-Javier defended the verdict of conviction. It argued that testimonial, documentary, and object evidence established appellant's sale of dangerous drugs: PO3 Loyola and PO1 Lico positively identified appellant as the person who sold shabu to the poseur-buyer; exclusion of the buy-bust money as evidence is immaterial for it is merely corroborative; and the corpus delicti was presented and identified in court.[27]

More, the procedural lapses appellant cited did not affect the admissibility and evidentiary weight of the drugs recovered from him. The failure of the police officers to mark the sachet of shabu at the place of seizure did not automatically impair the integrity of the chain of custody. Too, police officers are presumed to have acted regularly in the performance of their official functions, absent any proof to the contrary or any ill will.[28]

At any rate, appellant failed to object to the admissibility of the seized item. Since he did not challenge the custody or preservation of the corpus delicti during the trial below, he cannot be allowed to do so at this late stage.

The Court of Appeals' Ruling

By Decision dated June 28, 2017, the Court of Appeals affirmed.[29] It found that the chain of custody was not broken and that the corpus delicti was established with reasonable certainty.[30] It agreed with the OSG that the marked money was not an essential element in proving the crime of selling illegal drugs; the lack of coordination with the PDEA and failure to photograph and inventory were not fatal to the prosecution's cause; appellant failed to adduce sufficient evidence to substantiate his defense of denial and frame-up; and the presumption of regularity of performance of official duties must stand.[31]

The Present Appeal

Appellant now asks the Court for a verdict of acquittal.[32]

In compliance with Resolution dated July 11, 2018, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[33]

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the marking, inventory, and photograph of the seized item?

Ruling

We acquit.

In criminal cases, an appeal throws the entire case wide open for review.[34] Thus, even with the failure of appellant to object against the admissibility of the seized shabu or to challenge the custody disposition or preservation thereof, the Court is not barred from reviewing the irregularities appellant raised on appeal.

Here, petitioner is charged with unauthorized sale of dangerous drug allegedly committed on December 30, 2004. The governing law 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)

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.[35]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[36] 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.[37]

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.[38]

Records show that the prosecution here had breached the chain of custody in several instances.

Prosecution witness PO3 Loyola testified:

PROS. SAMPAYO

xxxx

Q:

After all the preparations, what did you do?

A:

We proceeded to the place

Q:

Did you actually arrived (sic) at the place?

A:

Yes, ma'am.

Q:

What happened there?

A:

We saw our target.

Q:

What date was that?

A:

December 30, 2004.

Q:

What time did you arrive there?

A:

More or less 9:40 P.M.

Q:

When you arrived there, what happened?

A:

We saw our target Jeffrey Victoria.

xxxx

Q:

What did Lico do?

A:

He approached the target.

Q:

What happened when he approached the target?

A:

I saw Lico hand over the money.

Q:

What did Jeffrey Victoria do after he received the money?

A:

He pulled out something from his pocket.

Q:

After that what happened?

A:

He gave the pre-arranged signal.

Q:

What happened next?

A:

We approached him.

Q:

After that?

A:

I introduced ourselves as police officers.

Q:

What happened next?

A:

PO1 Lico hand (sic) over to me the shabu.

Q:

After the specimen was turned over to you, what happened?

A:

I recovered from the possession of Jeffrey Victoria marked money used in the buy-bust operation.

Q:

After that where did they bring the person?

A:

After informing him of his constitutional rights, we brought him to the Headquarters. (Emphasis supplied)

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Q:

You said that the specimen was turned over to you, what did you do with the specimen?

A:

I turned it over to the investigator.

Q:

Before you turned over to the investigator, what was done to the specimen?

A:

The investigator marked the specimen.[39] (Emphasis supplied)

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Prosecution witness PO1 Pangilinan further testified:

PROS. SAMPAYO

xxxx

Q:

What happened when you arrested Jeffrey Victoria?

A:

He was apprised of his constitutional rights and directed to put out the contents of his pockets.

Q:

What was in his pocket?

A:

The Php 100 was recovered.

Q:

After recovering the marked money, what did you do as a team?

A:

We brought him to the police station.

Q:

What did you do there?

A:

We prepared the recovered one (1) plastic sachet and sent it to the PNP Crime Laboratory Service for examination.

Q:

What do you mean you prepared?

A:

We prepared a request for laboratory examination.

Q:

What about the specimen?

A:

We placed the markings.

Q:

Do you know the markings that were put on the specimen?

A:

RVM, the initials of the investigator.[40] (Emphasis supplied)

PROS. BANGUI

xxxx

Q:

Was there any physical inventory of the items confiscated from the accused?

A:

None.

Q:

Who put the marking on the sachet?

A:

The officer-on-case.

Q:

It was done at the police station?

A:

Yes, Sir.[41] (Emphasis supplied)

xxxx

As admitted by the prosecution witnesses themselves: First, the seized item was not marked at the place of the arrest. The Court clarified in *People v. Ramirez*,^[42] that marking of the seized item immediately after seizure is vital to ensure its integrity and veracity by preventing switching, planting, or contamination of evidence.^[43] In *Ramirez*, the Court acquitted the accused because the seized item was marked at the barangay hall and not at the place of arrest.

Second, the inventory and photograph requirements were not complied with either. PO1 Pangilinan did not explain this omission. In *Jocson v. People*,^[44] the Court acquitted petitioner for the same omission coupled with the sheer lack of an explanation or justification therefor.

Third, it was not arresting officer PO3 Loyola who marked the sachet, but investigating officer PO1 Marundan. Notably, the latter was not even presented by the prosecution to testify on how he handled the seized item. This is another break in the chain of custody. In *People v. Ismael*, the Court ruled that this break in the chain of custody cast doubt on to the identity of the corpus delicti.^[45]

Finally, PCI Cejes merely confirmed the existence of the specimen, but did not testify on how the specimen was handled. In *People v. Ubungen*^[46] the Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the fourth link in the chain of custody could not be reasonably established.

Indeed, the repeated breach of the chain of custody rule here had cast serious uncertainty on the identity and integrity of the corpus delicti. The metaphorical chain did not link at all, albeit it unjustly restrained petitioner's right to liberty. Verily, therefore, a verdict of acquittal is in order.

Strict adherence to the chain of custody rule must be observed;^[47] the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence vis-a-vis the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule.

We have clarified, though, that a perfect chain may be impossible to obtain at all times because of varying field conditions.^[48] In fact, 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.[49] The prosecution's witnesses, however, did not even offer any excuse for the deviation from the strict requisites of the law.

In fine, the condition 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.

For perspective, life imprisonment is imposed for unauthorized sale of dangerous drugs even for the minutest amount. It, thus, becomes inevitable that safeguards against abuses of power in the conduct of buy-bust operations be strictly implemented. The purpose is to eliminate wrongful arrests and, worse, convictions. The evils of switching, planting or contamination of the corpus delicti under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.[50]

As heretofore shown, the chain of custody here had been breached several times over; the metaphorical chain, irreparably broken. Consequently, the identity and integrity of the seized drug item were not deemed to have been preserved. Perforce, petitioner must be unshackled, acquitted, and released from restraint.[51]

Suffice it to state that the presumption of regularity in the performance of official functions[52] cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.[53] And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule.

ACCORDINGLY, the appeal is GRANTED. The Decision dated June 28, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07849 is REVERSED and SET ASIDE.

Appellant JEFFREY VICTORIA y TARIMAN is ACQUITTED. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant Jeffrey Victoria y Tariman 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, Senior Associate Justice, (Chairperson), Caguioa, J. Reyes, Jr., and Zalameda, JJ., concur.

[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Florito S. Macalino and Maria Elisa Sempio Diy; Rollo, p. 2 and CA rollo p. 89.

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

[4] Rollo, p. 3.

[5] Id.

[6] Id. at 3-4.

[7] Id. at 4.

[8] Id.

[9] Id.

[10] TSN dated February 19, 2007, p. 7.

[11] Rollo, p. 4; TSN dated August 10, 2006, pp. 3-9.

[12] Rollo, pp. 4-5.

[13] Id. at 5.

[14] Id.

[15] Id. at 6.

[16] Ca Rollo, p. 10.

[17] Rollo, p. 6.

[18] Penned by Acting Presiding Judge Leili Cruz Suarez.

[19] Record, p 166.

[20] Rollo, p. 7.

[21] Id.

[22] CA Rollo, p. 41.

[23] Rollo, p. 8.

[24] Id.

[25] Id. at 9.

[26] Id. at 10.

[27] Id.

[28] Id. at 11-12.

[29] Id. at 2-17.

[30] Id. at 14.

[31] Id. at 12-16.

[32] Id. at 18-19.

[33] Id. at 23.

[34] "The reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors." *Remegio v. People of the Philippines*, G.R. No. 227038, July 31, 2017, citing *People v. Alejandro*, G.R. No. 225608, March 13, 2017, and *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[35] *People v. Barte*, 806 Phil. 533, 542 (2017).

[36] 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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[37] *People v. Dahil*, 750 Phil. 212, 231 (2015).

[38] *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

[39] TSN Dated August 26, 2005, Direct Examination of PO3 Froilan Loyola, pp. 5-8.

[40] TSN Dated August 10, 2006, Direct Examination of PO1 Dexter Pangilinan, pp. 7-8.

[41] TSN Dated February 19, 2009, Cross Examination of PO1 Dexter Pangilinan, p. 7.

[42] G.R. No. 225690, January 17, 2018, citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

[43] *People v. Sanchez*, citing *People v. Nuarin*, 764 Phil. 550, 557-558 (2015).

[44] G.R. No. 199644, June 19, 2019, citing *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[45] *Supra* note 35.

[46] G.R. No. 225497, July 23, 2018.

[47] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[48] See *People v. Abetong*, 735 Phil. 476, 485 (2014).

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

[50] See *People v. Luna*, G.R. No. 219164, March 21, 2018.

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

[52] Section 3 (m), Rule 131, Rules of Court.

[53] *People v. Cabilies*, 810 Phil. 969, 976-977 (2017).

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