

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEO ILAGAN Y GARCIA @ “LEO,” ACCUSED-APPELLANT.*G.R. No. 244295. November 09, 2020*

Ponente: LOPEZ, J.

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Assailed in this appeal is the Decision[1] dated August 28, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09790, which affirmed the Regional Trial Court’s (RTC) Judgment,[2] convicting accused-appellant Leo Ilagan y Garcia (accused-appellant) of violation of Sections 5[3] and 11,[4] Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

ANTECEDENTS

Based on an information received from a confidential agent, the Intelligence Section of the Calamba City Police Station planned a buy-bust operation against accused-appellant, who is allegedly involved in the sale of drugs. On January 14, 2017, upon coordination with the Philippine Drug Enforcement Agency (PDEA) Calabarzon, the buy-bust team went to the residential apartment of the accused-appellant in Barangay (Brgy.) Lawa, Calamba City. The designated poseur-buyer, PO1 Julian B. Malate III (PO1 Malate), boarded a motorcycle with the informant, while the rest of the team trailed behind in a gray Mitsubishi Lancer. Once there, the informant knocked at the door. Accused-appellant peeked to ask PO1 Malate how much will he buy. PO1 Malate replied P500.00 only, while handing over the amount of P500.00. Accused-appellant reached into his right pocket to get a small plastic sachet containing the suspected shabu (methamphetamine hydrochloride), which he gave to PO1 Malate. Thereafter, PO1 Malate placed the plastic sachet in his left pocket and immediately informed accused-appellant that he is a police officer. Just then, the other members of the buy-bust team, who were positioned about seven meters away from the gate of the house, rushed into the scene, together with Brgy. Councilor Teodora Hinggan (Councilor Hinggan). There was no media representative present as the latter allegedly went straight to the police station. PO1 Malate apprised accused-appellant of his rights under the Miranda doctrine. PO1 Malate took out the plastic sachet containing the suspected shabu from his left pocket and marked it “PNP-BB-1-14-17” in the presence of Councilor Hinggan.

PO1 Malate also conducted a preventive search on the person of accused-appellant, and he was able to recover the P500.00-marked money and another heat-sealed plastic sachet which he marked as LI-1. Likewise recovered on accused-appellant’s bed were two (2) aluminum strips, an improvised tooter, and a disposable lighter, marked as LI-2 to LI-4. The items were seized, and photographs were taken during the physical inventory conducted by PO1 Malate in the presence of accused-appellant and the brgy. official. After giving a copy of the inventory to accused-appellant and the brgy. official, the seized items were placed by PO1 Malate in a plastic evidence bag with zip lock, before keeping the same in his empty handbag. The team first brought accused-appellant to Jose P. (JP) Rizal Hospital for a medical examination before proceeding to the police station. Upon arrival at the police station, the investigator prepared a request for drug testing and laboratory examination. The seized items were then brought by PO1 Malate to the Regional Crime Laboratory and these were received by the officer on duty,

PO3 Randy Legaspi (PO3 Legaspi).[5]

After the qualitative examination, the two heat-sealed plastic sachets containing white crystalline substance gave positive results for the presence of shabu, a dangerous drug.[6] Accused-appellant was then indicted for Illegal Sale and Illegal Possession of Dangerous Drugs in two (2) Informations, filed before the RTC, Branch 37 of Calamba City, Laguna:

[Crim. Case No. 28711-17-C]

That on January 14, 2017, in the City of Calamba, Province of Laguna 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 a poseur buyer a quantity of methamphetamine hydrochloride, otherwise known as shabu, a dangerous drug, having a total weight of 0.05 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.[7]

[Crim. Case No. 28712-17-C]

That on January 14, 2017, in the City of Calamba, Province of Laguna 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 possess one (1) plastic sachet of methamphetamine hydrochloride, otherwise known as shabu, a dangerous drug, having a total weight of 0.12 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.[8]

Accused-appellant denied the charges, and claimed that he was just mistaken for another person. On January 14, 2017, accused-appellant was outside his house cleaning his motorcycle. He was surprised when several men wearing civilian clothes arrived on board five motorcycles. As he stood up, two of the men held his arms and brought him inside his house. After he was made to go on the ground in prone position, a man asked him: “Ano Gerard, saan mo tinatago ang shabu mo.” At that point, he told the men that his name is not Gerard and showed them his identification (IDs) while begging. One of the men told him to just point to another person in exchange for his freedom. Accused-appellant then saw PO1 Malate arrive wearing a police uniform and heard him say: “sige, tuluyan na yan tumawag ng barangay.” Accused-appellant was asked to sit on a chair and he saw that there was a crumpled aluminum foil, plastic, and a lighter. After that, he was brought to JP Rizal hospital and then to the police station. Accused-appellant stressed that he did not sell illegal drugs to PO1 Malate and insisted that he only learned of the charges against him when he was already detained.[9]

After trial, the RTC issued the Judgment dated August 16, 2017,[10] finding accused-appellant guilty of the offenses of Illegal Sale and Possession of Dangerous Drugs:

IN VIEW OF THE FOREGOING, in Criminal Case No. 28711-2017-C (City), the Court finds accused, LEO ILAGAN y GARCIA @ LEO, GUILTY BEYOND REASONABLE DOUBT of violation of Section 5, Article II of Republic Act No. 9165. He is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to PAY A FINE OF FIVE HUNDRED THOUSAND (Php500,000.) PESOS.

In Criminal Case No. 28712-2017-C (City), the Court finds accused, LEO ILAGAN y GARCIA @ LEO, GUILTY BEYOND REASONABLE DOUBT of violation of Section 11, paragraph 2 (3), Article II, Republic Act No. 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, and to PAY A FINE OF THREE HUNDRED THOUSAND (Php300,000.00) PESOS.

The Branch Clerk of Court is hereby ordered to turn-over to the PDEA the methamphetamine hydrochloride (shabu) and paraphernalia submitted in evidence for these cases.

SO ORDERED.[11]

The CA affirmed the trial court's ruling.[12] Hence, this appeal. Accused-appellant asserts his innocence, claiming that he was mistaken by the police officers for his neighbor "Gerard." He maintains that the prosecution failed to prove the elements of the offenses charged. He also invites the Court's attention to the irregularities in the marking and inventory of the dangerous drugs allegedly recovered from him. These irregularities affect the integrity of the corpus delicti, and result in a broken chain of custody of the seized items.[13]

RULING

We acquit.

Accused-appellant claims that there was no actual sale of drugs as the alleged buy-bust operation did not transpire. It was his main defense that he was mistakenly identified as "Gerard," the person who was the target of the buy-bust team. This Court is not convinced. The record shows that the name of accused-appellant was duly reflected as "@Leo Ilagan and cohorts" in the Pre-Operation Report[14] of the Calamba City Police Station and the Certificate of Coordination[15] issued by the PDEA. As pointed out by the trial court, these documents were prepared before the actual buy-bust operation and both contained the name of the accused-appellant.[16] Sure enough, this circumstance negates accused-appellant's contention of mistaken identity.

As regards the corpus delicti in Illegal Sale and Possession of Dangerous Drugs, the fact of existence of the contraband itself is vital to a judgment of conviction.[17] Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.[18] Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.[19] Here, the records reveal a broken chain of custody.

Foremost, the absence of a representative of the National Prosecution Service (NPS) or the media as an insulating witness to the inventory and photograph of the seized item[20] puts serious doubt as to the integrity of the first link. We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.[21] In *People v. Lim*,[22] we explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the earnest efforts made to secure their attendance, thus:

It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand

knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 [Article II] of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[23] (Emphasis, underscoring, and italics in the original.)

Later, in *People v. Caray*,[24] we ruled that the corpus delicti cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule under Section 21, Article II of RA No. 9165. Similarly, in *Matabilas v. People*,[25] sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

Here, the first link that involves the marking and inventory of the seized items already displays infirmities. The heat-sealed plastic sachet containing the shabu subject of the buy-bust was marked by PO1 Malate only in front of Councilor Hinggan.[26] Also, the pictures[27] taken during the physical inventory and the Receipt/Inventory for Property Seized[28] showed that only one witness was present — Councilor Hinggan. The police officers did not give a sufficient explanation for their failure to summon a media representative or one from the NPS at the place of arrest. Instead, the prosecution simply claimed that the media representative went straight to the police station.[29] However, there is no showing that a media representative indeed arrived at the police station, not even at that time when the accused-appellant was already brought there for investigation and booking procedures. This is an utter disregard of the required procedure laid down in Section 21, Article II of RA No. 9165 which created a huge gap in the chain of custody. The records likewise indicate gaps on the other links.

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. This is necessary in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for developing the criminal case. To be able to do so, the investigating officer must have possession of the illegal drugs for the preparation of the required documents.[30] In this case, the investigator or Officer on Case is PO3 Ernesto Reyes (PO3 Reyes) as shown in these documents: the Salaysay of PO1 Malate,[31] the Request for Laboratory Examination[32] and Request for Drug Test.[33] However, a perusal of the Chain of Custody Form[34] shows that PO3 Reyes' name and signature are not reflected therein. This means that that seized items were not transferred to the investigating officer. It behooves this Court to now question how PO3 Reyes could have properly performed his investigation without having the corpus delicti on hand. The second link is missing, and this certainly casts doubts on the integrity of the seized items.[35]

The same is true with the third link which involves the delivery by the investigating officer of the illegal drug to the forensic chemist, who will then test and verify the nature of the substance.[36] Going over the Chain of Custody Form, one would notice that there are only two entries — one indicates the name of the arresting officer PO1 Malate and the other pertains to the Duty Desk Officer of the Crime Laboratory, PO3 Legaspi. Notably, there is no information on how PO3 Legaspi handled the seized items and when these items were transferred to the custody of the forensic chemist.

With regard to the fourth link, the Court observed that after marking the Chemistry Report No. D-072-17[37] submitted by the Forensic Chemist, Police Chief Inspector Donna Villa P. Huelgas (Forensic Chemist Huelgas), the prosecution opted to dispense with her testimony. The following stipulations and admissions were entered into by the parties:

- 1.

The qualification of the Forensic Chemist Donna Villa P. Huelgas as an expert witness.

2.

The existence and due execution of the letter request dated 26 September 2015 with the subject specimen(s) enclosed thereto which was/were delivered and received by the crime laboratory.

3.

That said Letter-Request for laboratory examination was duly received by the Regional Crime Laboratory Office.

4.

That attached to the said request are two (2) pieces of small heat-sealed plastic sachets containing white crystalline substance marked as “PNP-BB” 1-14-17 and “LI-1[,]” two (2) pieces of aluminum foil strips marked as “LI-2” and “LI-3” and one (1) piece aluminum foil strip (improvised tooter) marked as “LI-4[.]”

5.

That pursuant to the said letter request, Forensic Chemist Donna Villa P. Huelgas conducted a qualitative examination of the specimen(s) enclosed in the said letter and that the result of the examination was reduced into writing in Chemistry Report No. D-072-17.

xxx xxx xxx

[6.]

The existence and due execution of Chemistry Report No. D- 072-17.

[7.]

The Forensic Chemist has no personal knowledge from whom the specimen subject of her examination was taken/seized.

[8.]

That the specimen examined by the Forensic Chemist were the same specimen transmitted to the prosecution which was marked as Exhibits “D”, “D-1”, “D-2”, “D-3”, “D-4” and “D-5”. [38]

In *People v. Cabuhay*, [39] the Court stressed that in case the parties agreed to dispense with testimony of the forensic chemist, the stipulation on what the latter would have testified should include that he/she had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she resealed it after examination of the content; and (3) that he/she placed his/her own marking on the same to ensure that it could not be tampered with pending trial. [40] Unfortunately, the stipulations made in lieu of the testimony of Forensic Chemist Huelgas failed to state the precautions taken in safekeeping the seized drugs; hence, did not produce the desired result in the matter pertaining to the last link in the chain of custody. The ruling in *People v. Dahil* [41] is instructive:

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs [,] but the parties resorted to a general stipulation of her testimony. Although several subpoenae[s] were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked

money, which was not even indispensable in the criminal case.

The case of *People v. Gutierrez* also had inadequate stipulations as to the testimony of the forensic chemist. No explanation was given regarding the custody of the seized drug in the interim — from the time it was turned over to the investigator up to its turnover for laboratory examination. The records of the said case did not show what happened to the allegedly seized shabu between the turnover by the investigator to the chemist and its presentation in court. Thus, since there was no showing that precautions were taken to ensure that there was no change in the condition of that object and no opportunity for someone not in the chain to have possession thereof, the accused therein was likewise acquitted.[42] (Emphasis supplied.)

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable, and cannot be regarded as binding truth.[43] Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.[44]

We reiterate that the provisions of Section 21, Article II of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. This Court cannot tolerate the lax approach of law enforcers in handling the very corpus delicti of the crime. Hence, accused-appellant must be acquitted of the charges against him given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is GRANTED. The Decision dated August 28, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09790, affirming the conviction of accused-appellant Leo Ilagan y Garcia of violation of Sections 5 and 11, Article II of Republic Act No. 9165 is REVERSED and SET ASIDE. Accused-appellant Leo Ilagan y Garcia is ACQUITTED of the offenses charged, and is ordered immediately RELEASED from custody unless he is being held for some other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Resolution.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lazaro- Javier, and Rosario,[*] JJ., concur.

[*] Designated as additional member per Special Order No. 2797 dated November 5, 2020.

[1] CA rollo, pp. 112-124; penned by Associate Justice Edwin D. Sorongon, with the concurrence of Associate Justices Sesinando E. Villon and Marie Christine Azcarraga-Jacob.

[2] Records, Vol. 2, pp. 51-66; penned by Presiding Judge Caesar C. Buenagua.

[3] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] SEC. 11. Possession of Dangerous Drugs.

[5] Records, Vol. 1, pp. 5-7; Salaysay dated January 16, 2017.

[6] Id. at 8, Chemistry Report No. D-072-17.

[7] Id. at 1 (Crim. Case No. 28711-17-C).

[8] Records, Vol. 2, p. 1 (Crim. Case No. 28712-17-C).

[9] TSN, July 27, 2017, p. 7.

[10] Records, Vol. 2, pp. 51-66.

[11] Id. at 65-66.

[12] CA rollo, pp. 112-124.

[13] Id. at 32-56.

[14] Records, Vol. 1, p. 13.

[15] Id. at 14.

[16] Supra note 2, at 57.

[17] *People v. Partoza*, 605 Phil. 883, 891 (2009).

[18] *People v. Ismael*, 806 Phil. 21, 30-31 (2017).

[19] *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

[20] The offenses were allegedly committed on January 14, 2017. Hence, the applicable law is RA No. 9165, as amended by RA No. 10640, which mandated that: “The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance of 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 and custody over said items.”

[21] *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

[22] G.R. No. 231989, September 4, 2018.

[23] Id.

[24] G.R. No. 245391, September 11, 2019.

[25] G.R. No. 243615, November 11, 2019.

[26] Supra note 5.

[27] Records, Vol. 1, pp. 19-20.

[28] Id. at 15.

[29] Supra note 5.

- [30] *People v. Amorin* (Notice), G.R. No. 224884, December 10, 2019.
- [31] *Supra* note 5.
- [32] *Id.* at 10.
- [33] *Id.* at 9.
- [34] *Id.* at 11.
- [35] *People v. Amorin* (Notice), *supra*.
- [36] *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.
- [37] *Records*, Vol. 1, p. 8.
- [38] *Id.* at 40-41; Order dated June 23, 2017.
- [39] G.R. No. 225590, July 23, 2018, 873 SCRA 189.
- [40] *Id.* at 204-205, citing *People v. Pajarin*, 654 Phil. 461, 466 (2011).
- [41] 750 Phil. 212 (2015).
- [42] *Id.* at 238, citing *People v. Gutierrez*, 614 Phil. 285 (2009).
- [43] *Mallillin v. People*, 576 Phil. 576, 593 (2008); and *People v. Cañete*, 433 Phil. 781, 794 (2002).
- [44] *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

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