



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 221439

Present:

LEONARDO-DE CASTRO,*
 DEL CASTILLO,
*Acting Chairperson,***
 CAGUIOA,***
 TIJAM, and
 GESMUNDO,**** JJ.

- versus -

RASHID BINASING y DISALUNGAN,
Accused-Appellant

Promulgated:
JUL 04 2018

X -----

[Signature]

DECISION

DEL CASTILLO, J.:

Non-compliance with the requirements of Section 21, Republic Act (RA) No. 9165¹ casts doubt on the integrity of the seized items and creates reasonable doubt on the guilt of the accused.²

This is an appeal filed by appellant Rashid Binasing y Disalungan from the June 30, 2015 Decision³ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01089-MIN, affirming the September 26, 2012 Judgment⁴ of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, in Criminal Case No. 2010-1012, finding appellant guilty beyond reasonable doubt of violation of Section 5,⁵ Article II of RA 9165.

* On official leave.

** Per Special Order No. 2562 dated June 20, 2018.

*** Per January 17, 2018 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

**** Per Special Order No. 2560 dated May 11, 2018.

¹ Otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

² *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19, 33.

³ *Rollo*, pp. 3-10; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Pablito A. Perez.

⁴ *CA, rollo*, pp. 70-77; penned by Presiding Judge Arthur L. Abundiente.

⁵ *Illegal Sale of Dangerous Drugs*.

The Factual Antecedents

Appellant was charged under the following Information:

That on or about September 28, 2010 at 2:15 in the afternoon x x x more or less, at Vamenta Subd., Barra, Opol, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, deliver, and gave away to the poseur-buyer, during buy-bust operation, two (2) pieces of [heat]-sealed transparent plastic sachet containing 0.02 and 0.01 [gram] of Shabu – a dangerous drug after receipt of the marked money.

Contrary to Section 5 of Article II of R.A. No. 9165.⁶

Version of the Prosecution

During the trial, the prosecution presented the testimonies of Police Senior Inspector (PSI) Charity Peralta Caceres (PSI Caceres), SPO3⁷ Allan Payla (SPO3 Payla), SPO1 Roy Sabaldana (SPO1 Sabaldana), and Police Inspector Rogelio Labor (PI Labor).

The version of the prosecution as summarized by the CA is as follows:

On September 27, 2010, SPO3 Payla received a report from a civilian informant (CI) that a person [appellant] was selling shabu at Vamenta Subdivision, Barra, Opol, Misamis Oriental. SPO3 Payla relayed the information to his superior, PI Labor, who immediately instructed him to conduct surveillance. Thereafter, SPO3 Payla and the CI proceeded to the area. There, they were able to confirm that [appellant] was selling drugs in his house.

At about 1 o'clock in the afternoon of the following day, PI Labor, in coordination with the Philippine Drug Enforcement Agency (PDEA), formed a buy-bust team, composed of SPO3 Payla, SPO1 Sabaldana, PO3 Eva Española and the CI. They prepared four (4) 50-peso bills dusted with ultraviolet fluorescent powder as buy-bust money and then, on board two vehicles, the team proceeded to Vamenta Subdivision.

When the team arrived at the target area, SPO3 Payla gave the buy-bust money to the CI and instructed him to give a signal should the transaction be positive. The rest of the team remained inside the vehicles which were parked just about five (5) to six (6) meters from [appellant's] house. The CI alighted from the vehicle and headed towards the house. Upon reaching his destination, the CI waved at [appellant], then, the two had a conversation outside the house. Later, [appellant] went inside the house, came out again and delivered a transparent plastic sachet containing a white crystalline substance to the CI in exchange of the

⁶ Records, p. 3.

⁷ Referred as SPO4 in the TSN dated September 21, 2011.



buy-bust money. Immediately after the transaction, the CI gave the pre-arranged signal. SPO3 Payla and SPO1 Sabaldana then came out of the vehicle and arrested [appellant]. The CI handed the plastic sachet to SPO3 Payla while SPO1 Sabaldana frisked [appellant] and found another transparent plastic sachet in his pocket. SPO1 Sabaldana recovered the buy-bust money and the other plastic sachet from [appellant] and turned over the same to SPO3 Payla.

At the police station, SPO3 Payla marked the sachet received from the CI as ASP-1, and the sachet received from SPO1 Sabaldana as ASP-2. Then, SPO3 Payla requested for the laboratory examination of the seized items and personally delivered the same to the PNP Crime Laboratory. An examination, conducted by Forensic Chemist Charity Caceres, tested the seized items positive for methamphetamine hydrochloride or *shabu*. Likewise, [appellant] tested positive for the presence of green ultraviolet fluorescent powder on the dorsal and palmar aspects of both his left and right hands.⁸

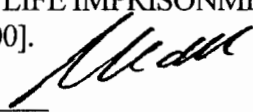
Version of the Appellant

Appellant, on the other hand, testified that while he was inside the house watching a movie with his wife and Ibrahim Sultan (Sultan), six men barged inside, identifying themselves as police officers.⁹ They claimed that they were able to purchase *shabu* from him and conducted a search of the house but found nothing.¹⁰ He and Sultan were then brought to the police station.¹¹ Sultan, however, was later released.¹² Appellant, on the other hand, was asked to give ₱100,000.00.¹³ But since he did not have that amount of money, he was arrested and brought to the Crime Laboratory, where he was made to hold four pieces of ₱50.00 bills.¹⁴ To corroborate his testimony, appellant presented Sultan as witness.

Ruling of the Regional Trial Court

On September 26, 2012, the RTC rendered a Judgment finding the appellant guilty of violating Section 5, Article II of RA 9165, the *fallo* of which reads:

WHEREFORE, premises considered, this Court hereby finds the [appellant] RASHID BINASING y DISALUNGAN GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the Fine of One Million Pesos [₱1,000,000.00].



⁸ *Rollo*, pp. 5-6.

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Let the penalty imposed on the accused be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act, that crime does not pay, and that the pecuniary gain and benefit which one can enjoy from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted, convicted, and penalized to the full extent of the law.

SO ORDERED.¹⁵

Ruling of the Court of Appeals

Appellant appealed the case to the CA.

On June 30, 2015, the CA rendered the assailed Decision, denying the appeal and thus, affirming the Judgment in *toto*.

Hence, appellant filed the instant appeal.

The Court required both parties to file their respective supplementary briefs; however, they opted not to file the same.

The Court's Ruling

In assailing his conviction, appellant puts in issue the failure of the apprehending team to comply with the procedural safeguards laid down in Section 21, Article II of RA 9165 as well as the conflicting testimonies of the prosecution's witnesses.¹⁶

The appeal is meritorious.

The apprehending team failed to comply with Section 21, Article II of RA 9165.

Section 21, Article II of RA 9165, as amended by RA 10640,¹⁷ reads:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled*

¹⁵ CA rollo, pp. 76-77.

¹⁶ Id. at 65-68.

¹⁷ 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 July 15, 2014.



Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, x x x 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.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, x x x the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results x x x shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, x x x does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided*, however, That a final certification shall be issued immediately upon completion of the said examination and certification;

The said provision clearly requires the apprehending team to mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel and the insulating witnesses, namely, any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.¹⁸ Failure to strictly comply with this rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that “(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.”¹⁹ However, in case of non-compliance, the prosecution must be able to “explain the reasons behind the procedural lapses, and that the integrity

¹⁸ *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

¹⁹ *People v. Geronimo*, G.R. No. 225500, September 11, 2017.



and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist.”²⁰

In this case, the marking and physical inventory, as well as the taking of the photograph of the seized items were not done in the presence of the insulating witnesses. And since no explanation was offered to justify the non-compliance, the Court finds that the prosecution failed to show that the seized substance from the accused were the same substances offered in court. Thus, the integrity of the *corpus delicti* was not properly established.

In addition, although the Seizure Receipt²¹ bore the signature of the accused, his presence during the marking and the physical inventory of the seized items was likewise not established as the prosecution’s witnesses failed to categorically state that the marking and the physical inventory were done in the presence of the accused or his representative or counsel. Pertinent portions of the testimony of SPO3 Payla read:

x x x x

Q: So, after that, what happened next?

A: After taking these items and the accused, we immediately left the area Sir, because we were afraid considering that it is a Muslim area.

Q: After you left, where did you proceed?

A: We proceeded to our Office.

Q: And then at your office, what did you do?

A: I personally marked the items.

Q: What markings did you make?

A: ‘ASP’

Q: I am showing to you certain items marked as ASP-1 and ASP-2, please tell us whether these are the same items that you marked?

A: Yes, Sir.

APP LLOREN:

We manifest, Your Honor, that the witness is identifying Exhibit[s] A and B.

COURT:

(to the witness)

Q: What does ‘ASP’ [mean]?

A: Allan S. Payla, Your Honor.



²⁰ Id.

²¹ Records, p. 21.

Q: When you say 'ASP-1', from whom did you get that?

A: From our civilian asset, Your Honor.

COURT:

(to APP Lloren)

Please proceed.

APP LLOREN:

(to the witness, continuing)

Q: I am showing you Exhibit B which you identified as ASP-2, where did you get this?

A: From Roy Sabaldana, Sir.

Q: Why is it that you are so sure that ASP-1 was the one given by the CI and ASP-2 was the one given by SPO1 Roy Sabaldana?

A: I am sure that these items marked as ASP-1 and ASP-2 were the items turned over to me because when I received them, I separately placed them in different pockets.

Q: After that, what happened?

A: I personally proceeded to the PNP Crime Lab for examination.

x x x x

Q: Before you brought the accused to the PNP Crime Lab, at your office, did you make any inventory?

A: Yes, Sir.

Q: I am showing to you a certain Seizure Receipt, is this the same inventory that you are talking about?

A: Yes, Sir. This is my signature.

x x x x

Q: Now, you mentioned, Mr. Witness, that you only marked the drugs in your office, is that correct?

A: Yes, Sir.

Q: And you also prepared the Seizure Receipt only at your office?

A: Yes, Sir.

Q: Why did you prepare it only at your office and not at the place where you arrested the accused?

A: We opted to prepare the inventory in our office because there were many people already surrounding us and we are not sure of our safety because this is a Muslim area.²²

The Court has ruled that the failure of the prosecution to offer any justifiable explanation for its non-compliance with the mandatory requirements of Section 21

²² TSN, September 21, 2011, pp.11-19.



of RA 9165 creates reasonable doubt in the conviction of the accused for violation of Section 5, Article II of RA 9165.²³

The prosecution's witnesses gave conflicting testimonies on material facts.

As a rule, inconsistencies or discrepancies in the testimonies of witnesses on minor details do not impair the credibility of the witnesses.²⁴ However, irreconcilable inconsistencies on material facts diminish, or even destroy, the veracity of their testimonies.²⁵

In this case, a careful review of the transcript of stenographic notes reveals that the prosecution's witnesses gave conflicting testimonies on material facts.

First. As to the place where the physical inventory was done, SPO3 Payla, the one who prepared the Seizure Receipt, testified that he marked the seized items and conducted the physical inventory in their office, to wit:

Q: Now, you mentioned, Mr. Witness, that you only marked the drugs in your office, is that correct?

A: Yes, Sir.

Q: And you also prepared the Seizure Receipt only at your office?

A: Yes, Sir.²⁶

His testimony, however, contradicted the testimony of SPO1 Sabaldana, one of the apprehending officers who signed as a witness in the Seizure Receipt, because according to him, the physical inventory was done at the house of the suspect. Pertinent portions of his testimony read:

Q: After you gave the sachet to [S]PO3 Payla, what happened next?

A: We immediately [made] a Seizure Receipt and informed him that these two were recovered from him.

Q: Where did you make the Seizure Receipt?

A: At his residence, at the house of the suspect.

Q: Aside from making the Seizure Receipt, what else did you do at the house of the accused?

A: We [went] inside his house and we informed him that these two sachets were taken from him and then after that we brought him to the station.²⁷

²³ *People v. Jaafar*, supra note 2 at 31-33.

²⁴ *People v. Hilet*, 450 Phil. 481, 490 (2003).

²⁵ *People v. Decillo*, 395 Phil. 812, 821 (2000).

²⁶ TSN, September 21, 2011, p.18.

²⁷ TSN, November 23, 2011, pp. 10-11.



x x x x

Q: You also did not make the Seizure Receipt in the scene of the crime?

A: We made, Sir.

Q: [Did] you [make] it [at] the scene of the crime?

A: Yes, Sir.

Q: In what particular part of the scene of the crime?

A: At his residence, Sir.

Q: You mean inside his residence?

A: Yes, Sir.²⁸

Second. As to the pre-arranged signal, the prosecution's witnesses gave different answers. SPO3 Payla testified that their pre-arranged signal was for the CI to remove his hat and nod his head.²⁹ SPO1 Sabaldana, however, testified that their pre-arranged signal was for the CI to raise his left hand.³⁰ Still, PI Labor testified that their agreement was for the CI to wave his hands twice.³¹

Considering the non-compliance of the apprehending team with the procedural safeguards laid down in Section 21, Article II of RA 9165 and considering further the conflicting testimonies of the prosecution's witnesses on material facts, the Court finds that the prosecution failed to prove its case. Accordingly, the Court is constrained to acquit appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The assailed June 30, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01089-MIN, which affirmed the September 26, 2012 Judgment of the Regional Trial Court of Cagayan de Oro City, Branch 25, in Criminal Case No. 2010-1012, is hereby **REVERSED and SET ASIDE**.

Accordingly, appellant Rashid Binasing y Disalungan is **ACQUITTED** based on reasonable doubt.

The Superintendent of the Davao Prison and Penal Farm is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five days from notice.



²⁸ Id. at 27.

²⁹ TSN, September 21, 2011, p. 8.

³⁰ TSN, November 23, 2011, p. 7.

³¹ TSN, January 25, 2012, pp. 11-12.

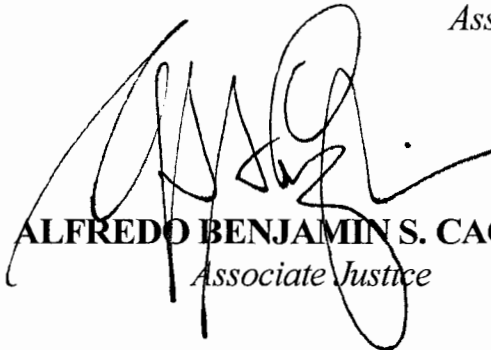
SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

(On official leave)

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice

