



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECORDED
 17 2018
 BY: *Jewel*
 TIME: *5:49*

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 216062

Present:

- versus -

LEONARDO-DE CASTRO, C.J.,
Chairperson,
BERSAMIN,
DEL CASTILLO,
TIJAM, and
***REYES, J., JR., JJ.**

HILARIO NEPOMUCENO y
VISAYA @ "BOK",
 Accused-Appellant.

Promulgated:

SEP 19 2018

X-----

[Signature]

DECISION

BERSAMIN, J.:

This appeal seeks the review and reversal of the decision promulgated on May 16, 2014,¹ whereby the Court of Appeals (CA) upheld the conviction of the accused-appellant handed down by the Regional Trial Court (RTC) in Manila in Criminal Case No. 08-259713 and Criminal Case No. 08-259714, respectively, for the violation of Section 5, Article II, Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) and the violation of Section 11(3) of the same law through the judgment dated May 3, 2012.²

The RTC imposed life imprisonment and a fine of ₱500,000.00 for the violation of Section 5, and the indeterminate sentence of 12 years and one

* Vice Associate Justice Francis H. Jardeleza, who inhibited due to his prior participation as the Solicitor General, per the raffle of September 12, 2018.

¹ *Rollo*, pp. 2-10; penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justice Vicente S.E. Veloso and Associate Justice Myra V. Garcia-Fernandez.

² Records, pp. 62-65; penned by Presiding Judge Reynaldo A. Alhambra.

day, as minimum, to 15 years, as maximum, and fine of ₱300,000.00 for the violation of Section 11(3).³

Antecedents

The Office of the City Prosecutor of Manila filed against the accused-appellant the following informations dated February 28, 2008, to wit:

Criminal Case No. 08-259713

That on or about February 21, 2008, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell one (1) heat-sealed transparent plastic sachet with net weight of ZERO POINT ZERO TWO ZERO gram (0.020g), known as "SHABU" containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 08-259714

That on or about February 21, 2008, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there wilfully, unlawfully and knowingly have in his possession and under his custody and control white crystalline substance contained in one (1) heat-sealed transparent plastic sachet with net weight of ZERO POINT ZERO TWO THREE gram (0.023g), known as "SHABU" containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

The CA summarized the factual and the procedural antecedents in its assailed decision, viz.:

The Prosecution's version is synthesized by the Office of the Solicitor General as follows:

On February 20, 2008, confidential informant reported to Police Inspector John Guiagi, head of Station Anti-Illegal Drugs (SAID) in Police Station 3, and informed him that an alias "Bok" was selling drugs in Felix Huertas St., Sta. Cruz, Manila. He instructed PO2 Boy Nino Baladjay and PO2 David Gonzales to take the confidential informant with them and conduct surveillance on the target. After confirming the

³ Id.

information, Gonzales prepared a pre-operation report and a coordination form with the PDEA to conduct buy-bust operation on the next day.

On February 21, 2008, Guiagi briefed Baladjay, SPO3 Morales and PO1 Cabocan on the conduct of the buy-bust operation. Baladjay prepared three (3) marked one hundred pesos (Php100.00) bills and he was designated as poseur buyer. They left the police station around 3:30 p.m. and proceeded to Felix Huertas St., near Fabella Hospital. Upon arrival, the confidential informant pointed to appellant and together with Baladjay, they approached the target. Baladjay was introduced to appellant by informant (sic) as a buyer. Appellant asked Baladjay, "*magkano?*" to which he replied three hundred pesos (Php300.00). Appellant then pulled from his pocket two (2) small plastic sachets containing white crystalline substance and asked Baladjay to pick one. After Baladjay picked one (1) sachet, he gave the three hundred pesos (Php300.00) to appellant and executed the pre-arranged signal. Baladjay then introduced himself as a police officer and arrested appellant. Baladjay recovered the other sachet and the marked money. Several persons tried to prevent the arrest hence they had to first bring appellant to the police station before marking the sachets and the money.

Subsequent laboratory examination of the sachets' contents confirmed it was *methylamphetamine hydrochloride*, otherwise known as *shabu*.

In his *Brief*, Appellant's version of the facts is as follows:

On February 21, 2008, at around 4:00 o'clock in the afternoon, Bok (Appellant) was on his way, coming from his work as a welder, when two (2) men riding in tandem on a motorcycle pulled over and asked him "where is the house of Hilario?" Bok replied that it was he, and was asking them "why," when he suddenly noticed five (5) other men, three (3) of which were in civilian clothing while the other two (2) were in police uniform, on board a car. The men on the motorcycle informed Bok that they wanted to invite him to the police station to ask him some question (sic). Tired and with hurting eyes, Bok told the policemen to ask him on the spot, but it fell on deaf ears. Curious, Bok decided to just go with them.

At the police station, Bok was surprised when he was suddenly detained inside the cell. Bok repeatedly asked the policemen the reason for his detention, but no one answered. Bok later found out that he was being charged for being a pusher when no illegal drug was ever found or recovered from him.⁴

Judgment of the RTC

As stated, the RTC convicted the accused-appellant of the crimes charged upon finding that the Prosecution had sufficiently and credibly proved all the elements of illegal sale and illegal possession of dangerous drugs, or *shabu*. It held that the arresting officers were entitled to the

⁴ *Rollo*, pp. 4-5.

presumption of the regularity of the performance of their functions, which justified declaring them to have complied with the procedures prescribed by law for the preservation of the integrity of the confiscated evidence. The RTC disposed thusly:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused **HILARIO NEPOMUCENO y VISAYA @ Bok GUILTY** beyond reasonable doubt:

1. In **CRIM. CASE NO. 08-259713**, of the crime of Violation of Sec. 5, Article II, Republic Act 9165, and is hereby sentenced to suffer Life Imprisonment and to pay fine in the amount of **₱500,000.00**; and
2. In **CRIM. CASE NO. 08-25714**, of the crime of Violation of Sec. 11 (3), Article II, Republic Act 9165, and is hereby sentenced to suffer imprisonment of **Twelve (12) years and one (1) day**, as minimum, to **Fifteen (15) years**, as maximum, and to pay fine in the amount of **₱300,000.00**.

Cost against the accused.

SO ORDERED.⁵

Decision of the CA

On appeal, the CA affirmed the convictions, observing that the Prosecution had established that the police officers were able to preserve the integrity of the confiscated dangerous drugs despite the non-compliance with the procedural requirements stated in Section 21 of R.A. No. 9165; and that the chain of custody of the dangerous drugs in question was further shown to have been unbroken. The *fallo* reads:

WHEREFORE, the instant appeal is **DISMISSED**. The *Decision* dated 3 May 2012 of the Regional Trial Court of Manila, Branch 53, in Criminal Case Nos. 08-259713 and 08-259714 is hereby **AFFIRMED**.

SO ORDERED.⁶

Issues

In this appeal, the Office of the Solicitor General (OSG) as counsel of the Prosecution⁷ and the Public Attorney's Office (PAO) as counsel of the accused-appellant,⁸ separately manifested that for purposes of this appeal

⁵ CA *rollo*, p. 65.

⁶ *Rollo*, p. 10.

⁷ *Id.* at 18-19.

⁸ *Id.* at 25-26.

they were no longer filing supplemental briefs, and adopted their respective briefs submitted to the CA.

Accordingly, the accused-appellant continues to argue that he was entitled to acquittal because of the non-compliance by the apprehending officers with the procedural requirements stated in Section 21 of R.A. No. 9165; that the Prosecution did not justify the non-compliance by the apprehending officers with the post-arrest requirements of Section 21 of R.A. No. 9165; and that such non-compliance was sufficient reason to doubt the integrity of the confiscated dangerous drugs as the substances seized from him.

In response, the OSG submits that the mere non-compliance with the procedural post-operation requirements of Section 21 of R.A. No. 9165 did not engender doubts as to the integrity of the confiscated dangerous drugs considering that, as the RTC correctly found, the integrity of the seized drugs as evidence of the *corpus delicti* had been preserved.

Ruling of the Court

The appeal is meritorious.

The State bears the burden of proving the elements of the illegal sale of dangerous drugs in violation of Section 5 of R.A. No. 9165 and of the illegal possession of dangerous drugs in violation of Section 11 of the same law. To discharge its burden of proof, the State should establish the *corpus delicti*, or the body of the crime itself. *Corpus delicti* is defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed. As applied to a particular offense, the term means *the actual commission by someone of the particular crime charged*. The *corpus delicti* is a compound fact made up of two elements, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of the act or result. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* if the subject drugs are missing, or if substantial gaps occur in the chain of custody of the seized drugs as to raise doubts about the authenticity of the evidence presented in the trial court.⁹

In fine, the dangerous drug is itself the *corpus delicti*. The only way by which the State could lay the foundation of the *corpus delicti* is to establish beyond reasonable doubt the illegal sale or illegal possession of the dangerous drug by preserving the identity of the drug offered as evidence against the accused. The State does so only by ensuring that the drug

⁹ *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 531-532.

presented in the trial court was the same substance bought from the accused during the buy-bust operation or recovered from his possession at the moment of arrest.¹⁰ The State must see to it that the custody of the seized drug subject of the illegal sale or of the illegal possession was safeguarded from the moment of confiscation until the moment of presentation in court by documenting the stages of such custody as to establish the chain of custody, whose objective is to remove unnecessary doubts about the identity of the incriminating evidence.¹¹

Section 21 of R.A. No. 9165,¹² as amended, sets specific procedures in the handling of the confiscated substance, thusly:

SEC. 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 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 person/s 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;

x x x x

The *Implementing Rules and Regulation of Section 21 (a) of RA 9165*, as amended, (IRR) echoes the foregoing requirements, thus:

¹⁰ *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 317-318.

¹¹ See *Mallillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

¹² See Republic Act No. 10640.

X X X X

(a) The apprehending office/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; x x x

Strict compliance with the prescribed procedure is necessary because the illegal drug has the unique characteristic of becoming indistinct and not readily identifiable, thereby generating the possibility of tampering, alteration or substitution by accident or otherwise. The rules governing the observance of the measures safeguarding the conduct and process of the seizure, custody and transfer of the drug for the laboratory examination and until its presentation in court must have to be strictly adhered to.¹³

The preservation of the *corpus delicti* is primordial to the success of the criminal prosecution for illegal possession and illegal sale of the dangerous drug. Consequently, we cannot accord weight to the OSG's insistence that the mere non-compliance by the arresting officers with the procedures, without any proof of actual tampering, alteration or substitution, did not jeopardize the integrity of the confiscated drug for being contrary to the letter and intent of the law. We deem it worthy to reiterate that the safeguards put in place by the law precisely to prevent and eliminate the *possibility* of tampering, alteration or substitution as well as to ensure that the substance presented in court was itself the drug confiscated at the time of the apprehension are not to be easily dismissed or ignored.

The accused could not be protected from tampering, alteration or substitution of the incriminatory evidence unless the Prosecution established that the arresting or seizing officer complied with the requirements set by Section 21 of R.A. No. 9165. Yet, the records herein reveal that the police officers did not mark the confiscated drugs at the place of the arrest but only upon their arrival at the police station; and did not conduct the physical inventory of the confiscated drug and did not take pictures thereof as required by Section 21.

¹³ *People v. Kamad*, G.R. No. G.R. No. 174198, January 19, 2010, 610 SCRA 295, 304-305.

The last sentence of paragraph (a) of Section 21 excuses lapses in the arresting officer's compliance with the requirements only if a justifiable reason is advanced for the lapses. Here, although the failure to mark the confiscated substances upon arrest of the accused could be excusable in light of the testimony of PO2 Baladjay that a neighbor of the accused had started a commotion during the arrest proceedings that rendered the immediate marking in that place impractical, the non-compliance with the requirements for the physical inventory and for photographing of the confiscated drug being taken "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" was not explained at all by the arresting officers.

In *People v. Pagaduan*,¹⁴ we emphasized the importance of the inventory and compliance with the other procedural requirements to safeguard the integrity of the confiscated drug and the failure to provide a justification to non-compliance of the requirements, and expounded on the consequence of the non-compliance being an acquittal, viz.:

In several cases, we have emphasized the importance of compliance with the prescribed procedure in the custody and disposition of the seized drugs. We have repeatedly declared that the deviation from the standard procedure dismally compromises the integrity of the evidence. In *People v. Morales*, we acquitted the accused for failure of the buy-bust team to photograph and inventory the seized items, without giving any justifiable ground for the non-observance of the required procedures. *People v. Garcia* likewise resulted in an acquittal because no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. In *Bondad, Jr. v. People*, we also acquitted the accused for the failure of the police to conduct an inventory and to photograph the seized items, without justifiable grounds.

We had the same rulings in *People v. Gutierrez*, *People v. Denoman*, *People v. Partoza*, *People v. Robles*, and *People v. dela Cruz*, where we emphasized the importance of complying with the required mandatory procedures under Section 21 of R.A. No. 9165.

We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. For this reason, the last sentence of the implementing rules provides 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

¹⁴ Supra, note 10, at 320-322.

apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]” Thus, noncompliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. **These lapses, however, must be recognized 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.**

In the present case, the prosecution did not bother to offer any explanation to justify the failure of the police to conduct the required physical inventory and photograph of the seized drugs. The apprehending team failed to show why an inventory and photograph of the seized evidence had not been made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). **We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. In other words, the justifiable ground for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.”**

Underscoring the lapses committed by the police operatives in handling the confiscated drug involved herein is the following excerpt of testimony, to wit:

Q: By the way, was there any photograph taken from [sic] the accused and the specimen recovered?

A: None, sir.

Q: Why there was [sic] no photograph taken during that time?

A: There was no camera available, sir.

Q: How about an inventory, was there any inventory made by your office with respect to the item you recovered from the accused?

A: None, it was a Spot Report, sir.

Q: Who prepared that Spot Report?

A: SPO2 Gonzales, sir.¹⁵

Although the foregoing excerpt seemingly indicated that the arresting officers were thereby attempting to explain their lapses, particularly the failure to take photographs of the confiscated drug as directed in the law, the supposed unavailability of a camera was obviously improbable simply because almost every person at that time carried a mobile phone with a camera feature. Even more obvious is the fact that the arrest resulted from a

¹⁵ TSN, dated March 2, 2010, p. 21.

buy-bust operation in relation to the conduct of which the police officers had more than sufficient time to anticipate the need for the camera. Also, the preparation of the spot report did not replace the conduct of the actual inventory that R.A. No. 9165 and its IRR specifically required. The inventory and the spot report were entirely distinct and different from each other. The latter referred to an immediate initial investigative or incident narrative on the commission of the crime (or occurrence of natural or man-made disaster or unusual incidents involving loss of lives and damage to properties), and was addressed to higher officers;¹⁶ it was an internal report on the arrest incident prepared without the participation of other persons like the accused, representatives of the media, the DOJ and a public official to witness the preparation of the inventory and to sign the inventory. In contrast, the inventory indicated the drugs and related material seized or recovered from the suspect, and should bear the signatures of the relevant persons that would insulate the process of incrimination from suspicion. Another distinction related to the requirement to furnish the suspect a copy of the inventory, which did not apply to the spot report.

The Court cannot condone the lapses or be blind to them because the requirements that were not complied with were crucial in the process of successfully incriminating the accused. The deliberate taking of the identifying steps ensured by the requirements was precisely aimed at obviating switching, “planting” or contamination of the evidence.¹⁷ Verily, the arresting officers’ failure to plausibly explain their lapses left in grave doubt the very identity of the *corpus delicti*, an important step in proving the offenses charged. For one, the lapses – being irregularities on the part of the arresting lawmen – quickly disauthorized the trial court from presuming the regularity in the performance of their official duties by the arresting officers.

The Court accepts that “while the chain of custody should ideally be perfect, in reality it is not, ‘as it is almost always impossible to obtain an unbroken chain.’”¹⁸ This limitation on the chain of custody is well recognized in the IRR, which states that non-compliance with the requirements under justifiable grounds shall not render void and invalid such seizures of and custody over said item as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending officer/team. In deciding drug-related offenses, therefore, the courts should deem to be essential “the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.”¹⁹

¹⁶ *The Philippine National Police Manual*, PNPM-DIDM-DS-9-1. The Criminal Investigation Manual (Revised) 2011. Accessed at http://www.pnp.gov.ph/images/Manuals_and_Guides/DIDM/Criminal-Investigation-Manual.pdf last January 24, 2018.

¹⁷ *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

¹⁸ *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 368.

¹⁹ *People v. Torres*, G.R. No. 191730, June 5, 2013, 697 SCRA 452, 466.

For failure of the Prosecution to prove the guilt of the accused-appellant beyond reasonable doubt, he is entitled to acquittal. His personal liberty could not be validly jeopardized unless the proof marshalled against him satisfied that degree of moral certainty that should produce in the unprejudiced mind of the neutral judge a conviction that the accused was guilty in doing the act with which he was charged of having committed contrary to law.


WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 16, 2014 in CA-G.R. CR-HC No. 05663; **ACQUITS** accused-appellant **HILARIO NEPOMUCENO y VISAYA** for failure of the Prosecution to prove his guilt for the crimes charged beyond reasonable doubt; and **ORDERS** his **IMMEDIATE RELEASE** from confinement unless there are other lawful causes for his confinement.

Let a copy of this decision be sent to the Director of the Bureau of Corrections in Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections shall report the action taken to this Court within five (5) days from receipt of this decision.


SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


JOSE C. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice