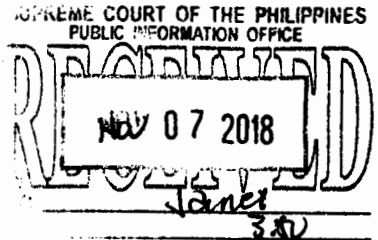




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



PEOPLE OF THE PHILIPPINES, **G.R. No. 218401**
Plaintiff-Appellee,

Present:

LEONARDO-DE CASTRO., C.J.,
Chairperson ,

- versus -

BERSAMIN,
DEL CASTILLO,
***JARDELEZA, and**
TIJAM, JJ.

JANET PEROMINGAN y
GEROCHE,
Accused-Appellant.

Promulgated:

SEP 24 2018

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DECISION

BERSAMIN, J.:

This appeal seeks the reversal of the decision promulgated by the Court of Appeals on May 26, 2014,¹ and the consequent acquittal of accused-appellant Janet Peromingan y Geroche for the crime of Illegal Sale of Dangerous Drugs as defined and punished by Section 5 of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

Antecedents

On July 7, 2008, the accused-appellant was charged with the violation of Section 5 of R.A. No. 9165 through the information that reads:

That on or about July 1, 2008 in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver

¹ On Wellness Leave.

¹ *Rollo*, pp. 2-7; penned by Associate Justice Ricardo R. Rosario, and concurred in by Associate Justice Amelita G. Tolentino and Associate Justice Manuel M. Barrios.

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 markings "SAID" weighing ZERO POINT ZERO FIVE SEVEN (0.057) gram of white crystalline substance containing methylamphetamine hydrochloride known as "shabu", which is a dangerous drug.

CONTRARY TO LAW.²

The RTC summarized the factual and procedural antecedents, as follows:

The testimony of **PSI ELISA REYES** was dispensed with after the public prosecutor and the defense counsel stipulated that she is the same Forensic Chemist who conducted the laboratory examination on the specimen submitted to their Office; that after forming physical, chemical and confirmatory tests, the examination gave positive result for Methylamphetamine Hydrochloride; that the result was reduced into writing in **Chemistry Report No. D-639-08**; and that she has no personal knowledge as to the source of the specimen subject matter of this case as well as to the circumstances surrounding the apprehension of the accused.

SPO3 ROLANDO DEL ROSARIO testified that on July 1, 2008 at around 10:00 o'clock in the morning, their Office received a telephone call from an unidentified caller informing them that a woman in black blouse and maong shorts, who was selling illegal drugs, was at the house of a certain pusher named **Onin** at Langkaan Area near Asuncion Street, Tondo, Manila; that he immediately informed Police Chief Inspector Roberto Macabeo about the information who in turn, instructed him and PO1 Arturo Ladia to verify the information; that at around 10:30 o'clock in the morning of the same day, he and PO1 Ladia boarded a sidecar and proceeded to the reported area; that at the target area, he saw from a distance of about 10-15 meters a woman in black blouse and maong shorts; that when he passed in front of the woman whose identity he later came to know as Janet Peromingan, the latter asked him "**Kukuha ka?**"; that he replied: "**Yes**" and pulled out a Two Hundred Peso (₱200) bill from his pocket and handed it to Janet Peromingan; that the accused in turn, handed to him a plastic sachet containing white crystalline substance; that after receiving the plastic sachet, he immediately arrested Janet Peromingan and identified himself as a police officer, thereafter, he apprised the latter of her constitutional rights, informed her of her violation, and brought her to their police station; that he recovered the buy-bust money from the accused; that at the police station, he marked the plastic sachet which he bought from the accused with the marking **SAID**, after which, he turned it over together with the buy-bust money to their Investigator, SPO1 Antonio Marcos, who then prepared the request for laboratory examination and delivered the specimen to the Crime Laboratory Unit of the SOCO; that he came to know later that the specimen yielded positive result to Methylamphetamine Hydrochloride also known as Shabu; that he executed two (2) Sworn Statements, the Affidavit of Poseur-Buyer and the Joint Affidavit of Apprehension; that they did not coordinate with the Barangay Officials in the place of arrest

² CA rollo, p. 9.

because nobody want to witness the apprehension; that before proceeding to the reported area, they did not prepare any document, did not coordinate with the PDEA, and did not bring any writing instrument because they went to the said area just to verify the veracity of the information received; and that the photographs of the items recovered from the accused taken by their Investigator were in the custody of the latter.

The testimony of **SPO2 ANTONIO MARCOS** was dispensed with after the public prosecutor and the defense counsel stipulated that on July 1, 2008, he was the designated Investigator at the Police Station 2, MPD, Moriones, Tondo; that he prepared the following documents: the Affidavit of Attestation (Exhibit H), the Joint Affidavit of Apprehension (Exhibit A), the Booking Sheet and Arrest Report (Exhibit B), the Referral-Letter for Inquest (Exhibit C), the Request for Laboratory Examination (Exhibit D), the Spot Report (Exhibit I), and the Inventory of the Seized Item (Exhibit J); that he was not the one who marked the confiscated evidence; that he delivered the specimen to the Crime Laboratory Unit; and that he has no personal knowledge as to the source of the specimen subject matter of this case as well as to the circumstances surrounding the arrest of the accused.

In addition, the prosecution offered Exhibit "A" to "H", inclusive of markings.

Accused **JANET PEROMINGAN**, on the other hand, took the witness stand for her own defense. She testified that she is residing at Isla Puting Bato and she is only doing laundry for a living; that on July 1, 2008 at around 5:30 in the morning, while she and her son Emerjohn Peromingan were walking along Langkaan, Tondo, on their way to Divisoria market, two (2) male persons in civilian attire suddenly grabbed them, forced them to board on a sidecar, and brought them to the Police Station 2, Tondo; that her son Emerjohn was released at the police station while she was asked to stay; that at the police station, the male persons whom she found out to be police officers asked her about the whereabouts of a certain **Evelyn** who according to them was big time; that when she could not point out to the police officers the whereabouts of Evelyn, the Investigator and their superior asked from her ₱150,000.00 for bail and in exchange for her freedom; that when she failed to give the money demanded of her, the police officers placed her inside the detention cell; that they informed her that she was charged for Violation of Section 5 when she was brought for inquest; that although she told the policemen that she was only a laundry woman, the police officers demanded ₱150,000.00 from her; that prior to her arrest, she did not know the arresting police officers; that she could not think of any reason why they would fabricate charges against her.

The defense offered no documentary evidence.³

Judgment of the RTC

On March 1, 2012, the RTC convicted the accused-appellant as charged, disposing:

³ Id. at 10-11.

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused JANET PEROMINGAN y GEROCHE **GUILTY** beyond reasonable doubt of the crime of Violation of Sec. 5, Republic Act 9165, and is hereby sentenced to suffer Life Imprisonment and to pay fine in the amount of **₱500,000.00**.

Costs against the accused.

SO ORDERED.⁴

The RTC accorded credence to the version of the apprehending police officer; and cited the presumption of regularity in the performance of duty by said officer.⁵

Decision of the CA

On May 26, 2014, the CA affirmed the RTC, holding as follows:

WHEREFORE, the Decision of the Regional Trial Court of Manila, Branch 53, dated 1 March 2012, in Criminal Case No. 08-262348, finding Janet Peromingan y Geroche guilty of sale of zero point zero fifty-seven (0.057) gram of *methylamphetamine hydrochloride* or *shabu*, in violation of Section 5, Article II of Republic Act No. 9165, and sentencing her to life imprisonment with a fine of Five Hundred Thousand Pesos (₱500,000.00), is **AFFIRMED**.

SO ORDERED.⁶

The CA considered the buy-bust operation mounted against the accused-appellant as valid. It stated that without any contrary evidence and showing of ill will on the part of the entrapping police officers, they were presumed to have performed their duties in a regular manner. It declared that the chain of custody of the seized substance was not broken; and that the *corpus delicti* was properly identified during the trial.⁷

Hence, this appeal.

Issues

For purposes of this appeal, the Office of the Solicitor General (OSG)⁸ and the Public Attorney's Office⁹ manifested that they were no longer filing

⁴ Id. at 13.

⁵ Id. at 12-13.

⁶ Id. at 80.

⁷ Id. at 78-79.

⁸ Id. at 14.

⁹ Id. at 20.

their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

In her appellant's brief, the accused-appellant has argued that the account by SPO3 Rolando Del Rosario of the circumstances leading to the arrest of the accused-appellant was incredible; that no confidential informant accompanied SPO3 Del Rosario and helped in identifying the accused-appellant as the person supposedly selling drugs; that SPO3 Del Rosario was merely equipped with the information that there was a woman in a black blouse and maong shorts selling illegal drugs in the specified area; that it was unbelievable that the accused-appellant would voluntarily offer her commodity to SPO3 Del Rosario; that the failure of the police officers to follow the procedure for the custody and disposition of the confiscated drugs as provided for in Section 21 of R.A. No. 9165, as amended, had compromised the identity of the *corpus delicti*; and that the irregularities and substantial gaps broke the chain of custody of the seized drug and rendered highly suspicious the identity of the drug presented in court.

In response, the OSG has maintained that the conviction was based on the positive and direct testimony of SPO3 Del Rosario who had apprehended the accused-appellant *in flagrante delicto*; that the testimony of SPO3 Del Rosario was fully corroborated by the other prosecution witness, PO1 Arturo Ladia, who, as the investigator on duty in Station 2 at the time, had personally witnessed the offer to sell *shabu* by the accused-appellant to SPO3 Del Rosario; that the arrest of the accused-appellant *in flagrante delicto* while selling *shabu* to SPO3 Del Rosario without any license or authority was legal and valid; that the Prosecution satisfactorily proved beyond reasonable doubt the existence of all the elements of the crimes of illegal sale and of unauthorized possession of *shabu* committed by the accused-appellant; and that the chain of evidence and circumstances showed that the integrity and identity of the *shabu* seized from the accused-appellant were never compromised.¹⁰

Ruling of the Court

The appeal is meritorious.

In prosecutions for violation of Section 5 of R.A. No. 9165, the State bears the burden of proving the elements of the offense of sale of dangerous drugs, which constitute the *corpus delicti*, or the body of the crime. *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that crime was actually committed. In cases involving the violation of laws prohibiting the illegal sale of dangerous

¹⁰ Id. at 58-59.

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drugs, the dangerous drugs are themselves the *corpus delicti*. Consequently, the State must present the seized drugs, along with proof that there were no substantial gaps in the chain of custody thereof as to raise doubts about the authenticity of the evidence presented in court. As such, the State and its agents are mandated to faithfully observe the safeguards in every drug-related operation and prosecution.¹¹

Section 21 of R.A. No. 9165, as amended, defines the procedural safeguards covering the seizure, custody and disposition of the confiscated dangerous drugs, thus:

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 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. (Emphasis supplied)

x x x x

The *Implementing Rules and Regulations of Section 21 of R.A. No. 9165* (IRR) have reiterated the statutory safeguards, *viz.:*

(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**

¹¹ *People v. Calates*, G.R. No. 214759, April 4, 2018.

the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (Emphasis supplied)

X X X X

The proper handling of the confiscated drug is paramount in order to ensure the chain of custody, a process essential to preserving the integrity of the evidence of the *corpus delicti*. In this connection, *chain of custody* refers to the duly recorded authorized movement and custody of the seized drugs, controlled chemicals or plant sources of the dangerous drugs or laboratory equipment, from the time of their seizure or confiscation to the time of their receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and for the purpose of destruction. The documentation of the movement and custody of the seized items should include the identity and signature of the person or persons who held temporary custody thereof, the date and time when such transfer or custody was made in the course of safekeeping until presented in court as evidence, and the eventual disposition. Accordingly, the safeguards of marking, inventory and picture-taking are all vital to establish that the substance confiscated from the accused was the very same one delivered to and presented as evidence in court.¹²

A review of the records reveals that the police officers did not follow the procedural safeguards prescribed by law, and thereby created serious gaps in the chain of custody of the confiscated dangerous drug. SPO3 Del Rosario, the only Prosecution witness who testified, readily admitted that the officers did not coordinate with any media representative, Department of Justice (DOJ) representative, or elected official during the physical inventory. Worse, SPO3 Del Rosario did not show that the marking and the inventory of the seized dangerous drugs were done in the presence of the accused-appellant or her representative. There was also no proof that any photograph was taken to document the evidence seized, *viz.:*

¹² Id.

Q: -By the way, earlier according to you, you purchased the one (1) small plastic sachet from the accused. If you will see again that plastic sachet will you be able to recognize it?

A: -Yes sir.

Q: -How will you be able to identify it?

A: -We put marking of SAID sir.

Q: -And who put that marking?

A: -I myself sir.

Q: -Where were you when you put that marking?

A: -At the office sir.

Q: -Why is it that you only put that marking inside your office and not at the place where you arrested the accused?

A: -Because at that time of apprehension we have no writing instrument because at that time we were just there to verify the veracity of the information sir.

x x x x

Q: -After you informed the accused of her constitutional rights, what happened next?

A: -We brought her to our officer sir.

Q: -Did you coordinate with the barangay officials of that place?

A: -No sir.

Q: -Why is it that you did not coordinate with the barangay officials of that place?

A: -There is no barangay official willing to witness the apprehension sir.

Q: -And did you not call any barangay official?

A: -Only barangay tanod sir.

Q: -Do you still recall the name of that barangay tanod?

A: -I cannot remember sir.

Q: -You said that after you arrested the accused, you returned to the police station. Where did you keep the plastic sachet that you recovered from the accused when you returned to the police station?

A: -In my pocket sir.

- Q: -And what happened when you arrived at the police station?
- A: -I immediately marked the specimen, I put SAID and I turned over to the investigator and the investigator prepared the request for laboratory examination to SOCO sir.
- Q: -And who delivered the said specimen to the crime laboratory unit?
- A: -Also the investigator sir, SPO1 Antonio Marcos sir.
- x x x x
- Q: -By the way, was there any photograph taken from the items that you recovered from the accused Mr. Witness?
- A: -I think there was a photograph taken by the investigator sir.
- Q: -Do you know where is that photograph right now, if you know?
- A: -I think it was in the custody of the investigator sir.
- x x x x
- Q: -Before you conducted the verification, did you coordinate with the PDEA?
- A: -No sir.
- Q: -Why is it that you did not coordinate with the PDEA?
- A: -We were only just there to verify the information sir.¹³

We further note that the “TURN OVER RECEIPT/INVENTORY OF SEIZED ITEMS” allegedly prepared by SPO1 Antonio Marcos had not been signed by SPO1 Marcos, or by the accused-appellant, or by any of the personalities required by law to witness the inventory and the photographing of the confiscated dangerous drugs (namely: the media representative, the representative from the DOJ, and an elective official).¹⁴ The absence of SPO1 Marcos’ signature from the document engendered doubts about the proper custody and handling of the dangerous drug after leaving the hands of SPO3 Del Rosario. Indeed, there was no way of ascertaining whether or not SPO1 Marcos had truly received the dangerous drug from SPO3 Del Rosario unless there was evidence from which to check such information. It is notable that the inventory itself – being dated June 28, 2008 – was faulty by virtue of its being dated prior to the apprehension of the accused-appellant on July 1, 2008.

¹³ TSN, April 20, 2010, pp. 10-15.

¹⁴ Records, p. 10.

The unavoidable consequence of the lapses and actuations of the police officers was the non-preservation of the chain of custody, which, in turn, raised serious doubt on whether or not the *shabu* presented as evidence was really the *shabu* supposedly sold by the accused-appellant to the poseur buyer. In fact, assuming that there had been an illegal transaction, we could even wonder aloud if it was really the accused-appellant who had sold the *shabu*. A reading of the details of the spot report prepared by SPO1 Marcos indicates that the accused-appellant was tagged as “U”, meaning *User*, as opposed to “Pu” or *Pusher*. Moreover, the spot report reflected a crime different from that for which the accused-appellant was supposedly arrested, to wit:

SPECIFIC PROVISIONS OF RA 9165 VIOLATED: Vagrancy and Sec. 11¹⁵

It is quite notable that the RTC and the CA relied too much on the presumption of regularity in the performance of official duties on the part of the police officers involved in the arrest and investigation of the accused-appellant. Their excessive reliance was unwarranted in view of the various patent indications of lapses on the part of the officers. Such lapses should have instead raised a red flag to caution against an unquestioning reliance. Consequently, presuming that they had regularly performed their duty became entirely bereft of factual and legal bases.

We remind the lower courts that the presumption of regularity in the performance of duty could not be stronger or firmer than the presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of being presumed innocent would become subordinate to a mere rule of evidence primarily devised for judicial convenience. Where, like herein, the proof adduced against the accused does not overcome the presumption of innocence, the presumption of regularity in the performance of duty should not be a factor in adjudging the accused guilty of the crime charged.¹⁶

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 26, 2014 by the Court of Appeals in C.A.-G.R. CR HC No. 05569; **ACQUITS** accused-appellant **JANET PEROMINGAN y GEROCHE** for failure to establish her guilt beyond reasonable doubt for the violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*); and **ORDERS** her immediate release from confinement at the Correctional Institute for Women, Bureau of Corrections, in Mandaluyong City, unless she is confined thereat for some other lawful cause.

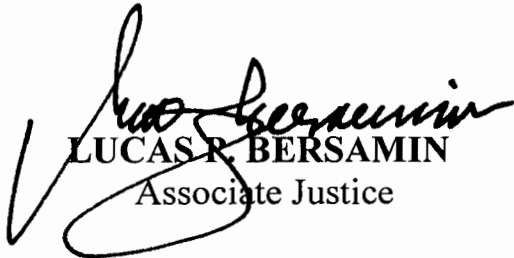
¹⁵ Id. at 4.

¹⁶ *People v. Catalan*, G.R. No. 189330, November 28, 2012, 686 SCRA 631, 646.

Let a copy of this decision be furnished to the Director of the Bureau of Corrections in Muntinlupa City for immediate implementation.

The Director of the Bureau of Corrections is directed to report the action taken conformably with this decision within five days from receipt of this decision.

SO ORDERED.


LUCAS R. BERSAMIN
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice


MARIANO C. DEL CASTILLO
Associate Justice

(On Wellness Leave)
FRANCIS H. JARDELEZA
Associate Justice


NOEL GIMENEZ TIJAM
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 J. LEONARDO-DE CASTRO
Chief Justice