



MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

MAR 10 2020

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 237803

Present:

LEONEN, J., Chairperson
GESMUNDO,*
CARANDANG,
LAZARO-JAVIER, and**
ZALAMEDA, JJ.

- versus -

ALLAN ALON-ALON y LIZARDA,
Accused-Appellant.

Promulgated:

November 27, 2019

MISAEL DOMINGO C. BATTUNG III

X ----- X

DECISION

ZALAMEDA, J.:

This is an appeal¹ seeking to reverse and set aside the Decision² dated 27 November 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07364 which affirmed with modification the Judgment³ dated 18 February 2015 of Branch 31, Regional Trial Court (RTC) of San Pedro City, Laguna, finding accused-appellant Allan Alon-Alon y Lizarida (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165.⁴

* On leave.

** Designated as additional Member of the Third Division per Special Order No. 2728.

¹ Rollo, pp. 16-18.

² Id. at 2-15; penned by CA Associate Justice Victoria Isabel A. Paredes, with Associate Justices Jose C. Reyes, Jr. (now a Member of this Court) and Jane Aurora C. Lantion, concurring.

³ CA rollo, pp. 86-91; penned by RTC Presiding Judge Sonia T. Yu-Casano.

⁴ Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Accused-appellant was charged in an Information,⁵ the accusatory portion of which states:

That on or about August 13, 2012, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to a police poseur-buyer for P300.00 one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride (shabu), a dangerous drug weighing 0.02 gram.

CONTRARY TO LAW.

Upon arraignment,⁶ accused-appellant pleaded not guilty⁷ to the charge. After pre-trial,⁸ trial on the merits ensued.

Version of the Prosecution

Acting on a confidential information, a team was formed to conduct a buy-bust operation against accused-appellant who was allegedly engaged in rampant illegal drug trade activities in San Pedro, Laguna. In the course of the buy-bust operation, accused-appellant sold to the poseur-buyer a plastic sachet containing suspected *shabu* and, in exchange, obtained payment in the amount of Three Hundred Pesos (Php 300.00). Upon arrest of accused-appellant, the buy-bust team immediately marked the buy-bust money and the plastic sachet subject of the sale. The inventory and the taking of the photographs of the seized items, however, were only done at the police station⁹ in the presence of accused-appellant and a member of the media.

⁵ Records, p. 1.

⁶ *Id.* at 38.

⁷ *Id.*

⁸ *Id.* at 43-44.

⁹ *Rollo*, pp. 5-6.



The seized items were brought to the crime laboratory for examination. Per Chemistry Report No. D-627-12, the specimen was found positive for Methamphetamine Hydrochloride.¹⁰

Version of the Defense

Accused-appellant denied the allegations against him. He claimed that in the evening of 13 August 2012, he was talking to a certain Angie, one of his tenants, when three (3) men arrived and entered his house. The men introduced themselves as police officers and ordered them to bring out the *shabu* they were hiding. When he and Angie protested, the police officers started searching his house. Unable to find anything, the police officers invited him to the police station for questioning where he was made to sign a piece of paper. Eventually, he was charged for violation of Section 5, Article II of RA 9165.¹¹

Ruling of the RTC

On 18 February 2015, the RTC rendered its Judgment,¹² the dispositive portion of which reads:

WHEREFORE, foregoing considered, judgment is hereby rendered finding Accused Allan Alon-Alon y Lizarda GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165. He is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos without subsidiary imprisonment in case of insolvency.

The period of his preventive imprisonment should be given full credit.

Let the plastic sachet of shabu subject matter of this case be immediately forwarded to the Philippine Drug Enforcement Agency for its disposition as provided by law. The P300.00 buy-bust money is

¹⁰ *Id.* at 6-7.

¹¹ TSN, 16 September 2014, pp. 4-7.

¹² CA *rollo*, pp. 86-91.



ordered forfeited in favour of the government and deposited in the National Treasury through the Office of the Clerk of Court.

SO ORDERED.¹³

Ruling of the CA

The CA affirmed the Judgment of the RTC and held that the prosecution clearly established the elements of illegal sale of *shabu*. It further declared that the chain of custody was not broken despite non-compliance with the requirements provided in Section 21 of RA 9165, as the prosecution was able to establish that the integrity and evidentiary value of the seized item were preserved from its seizure until its presentation in court.¹⁴

The CA affirmed with modification the penalty imposed by the RTC, in that accused-appellant shall be ineligible for parole.¹⁵

Hence, this appeal.

Issue

The sole issue in this case is whether the CA correctly found accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs under RA 9165.

Ruling of the Court

The appeal is meritorious.

An appeal in criminal cases throws the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in

¹³ *Id.* at 91.

¹⁴ *Rollo*, pp. 9-14.

¹⁵ *Id.* at 14.



the appealed judgment, whether or not assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.¹⁶

Accused-appellant was charged with the offense of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. To secure a conviction for illegal sale of dangerous drugs, the following essential elements must be established: (a) the identities of the buyer and the seller, the object of sale, and consideration; and (b) the delivery of the thing sold and the payment. Material in the prosecution of illegal sale of dangerous drugs is the proof that the sale took place, coupled with the presentation of the *corpus delicti* as evidence.¹⁷

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.¹⁸ Jurisprudence teaches that it is essential that the identity of the seized drug be established with moral certainty,¹⁹ and must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.²⁰ In order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same.²¹

Chain of custody means the duly recorded authorized movements and custody of the seized drugs at each stage, from the time of confiscation to receipt for forensic laboratory examination until their presentation in court for destruction.²² Section 21 of RA 9165 laid out the procedure to be followed by police officers:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of

¹⁶ *Cunanan v. People*, G.R. No. 237116, 12 November 2018.

¹⁷ *People v. Alvarado*, G.R. No. 234048, 23 April 2018, 862 SCRA 521, 534.

¹⁸ *Derilo v. People*, 784 Phil. 679-694 (2016); G.R. 190466, 18 April 2016, 789 SCRA 517, 525.

¹⁹ *Largo v. People*, G.R. No. 201293, 19 June 2019.

²⁰ *People v. Bartolini*, G.R. No. 215192, 27 July 2016, 798 SCRA 711.

²¹ *People v. Ching*, 819 Phil. 565-581 (2017); G.R. No. 223556, 09 October 2017, 842 SCRA 280.

²² See Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.



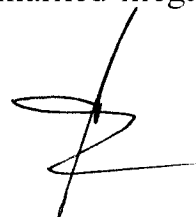
dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same **in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied)

The chain of custody rule was further expounded in the Implementing Rules and Regulations of RA 9165. Article II, Section 21(a) detailed the procedure as follows:

a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, further, 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[.]

Based on the foregoing provision, the Court enumerated the links in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e.*, *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal



drug seized from the forensic chemist to the court.²³ The chain of custody rule requires the testimony as to every link in the chain, describing how and from whom the seized evidence was received, its condition in which it was delivered to the next link in the chain, and the precautions taken to ensure its integrity.²⁴

As to the first link

The *first link* speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and taking of photographs of the seized or confiscated drugs, which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and an elected public official,²⁵ pursuant to Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged offense.

In this case, the physical inventory and taking of photographs were conducted in the presence of the accused-appellant, with only a representative from the media. The two (2) other required witnesses, i.e., a representative from the DOJ and an elected public official, were absent:

[Pros. De Leon:] What did you do after you arrived at the police station?

[PO3 Avila:] We called the media man, conducted inventory, and we took pictures of the item together with the suspect and the media man, sir.²⁶

As to the second and third links

According to prosecution witness PO2 Rick Jaison Almadilla, he turned over the seized items to PO3 Pio Pievro Avila (PO3 Avila) – one of the arresting officers, and not to the investigating officer, as mandated under the law. Likewise, it was PO3 Avila who brought the same to the crime laboratory.²⁷ There was no mention, however, on how he handled the said

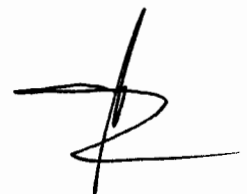
²³ *People v. Baltazar*, G.R. No. 229037, 29 July 2019.

²⁴ *People v. Havana*, 776 Phil. 462-476 (2016); G.R. No. 198450, 11 January 2016, 778 SCRA 524.

²⁵ *Id.*

²⁶ TSN, 12 November 2013, p. 9.

²⁷ TSN, 26 June 2014, p. 10; TSN, 12 November 2013, pp. 10-11.



specimen while it was in his custody until he brought it to the crime laboratory.

As to the fourth link

Forensic chemist Lalaine Ong Rodrigo testified that she received the specimen from their receiving clerk, and turned it over to the evidence custodian for safekeeping after her examination thereof. She likewise retrieved the same from the evidence custodian before presenting it in court.²⁸ However, the evidence custodian was not presented in court in clear disregard of the mandate that every link in the chain must testify, describing the condition of the seized item when it was delivered, and the precautions taken to ensure its integrity.²⁹

All the foregoing facts show a breach in each of the link of the chain of custody, casting doubt as to the integrity of the seized item.

To restate, the physical inventory and taking of photographs of the seized item were done in the presence of accused-appellant and a mere representative from the media as witness. In *People v. Seguinte*,³⁰ the Court acquitted the accused because of the absence of a DOJ representative during the conduct of inventory and taking of photographs. In said case, the Court keenly noted that the prosecution failed to recognize said deficiency and concluded that said lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti*.

As regards the absence of a testimony from PO3 Avila as to how he handled the seized item from receipt until he brought it to the crime laboratory, said testimony is imperative. To be sure, the probability on the integrity and identity of the *corpus delicti* being compromised is present in every storage or transportation of the prohibited item, be it from the Philippine National Police crime laboratory directly to the court or otherwise.³¹ Also, the non-presentation of the evidence custodian in court is similarly fatal to the prosecution's cause. In *People v. Ubungen*,³² the Court

²⁸ TSN, 17 September 2013, p. 3.

²⁹ *Supra* at note 24.

³⁰ G.R. No. 218253, 20 June 2018, 867 SCRA 268.

³¹ *People v. Carlit*, G.R. No. 227309, 16 August 2017.

³² G.R. No. 225497, 23 July 2018.



ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the fourth link in the chain of custody could not be reasonably established.

The prosecution failed to acknowledge and give a justifiable ground for non-compliance with Section 21 of RA 9165

It bears stressing that what makes the observance of the chain of custody even more crucial is that the *shabu* allegedly sold by the accused-appellant was only 0.02 gram.³³ In *People v. Holgado*,³⁴ the Court declared that the 5 centigrams (0.05 gram) of *shabu* seized was miniscule; hence, the need for exacting compliance with Section 21 of RA 9165, thus:

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malillin v. People*, this court said that “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.”³⁵ (Citations omitted)

Despite the clear failure of the police officers to strictly adhere to Section 21 of RA 9165, We are cognizant that the same provision nevertheless provides a saving clause. It states that non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team, shall not render void the seizure of, and custody over said items. However, this clause applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds,³⁶ which must be accompanied by evidence that the integrity and evidentiary value of the items are preserved.³⁷ Furthermore, in *People v. De Guzman*,³⁸ it was emphasized that the justifiable ground for non-compliance

³³ Records, p. 1.

³⁴ 741 Phil. 78 (2014); G.R. No. 207992, 11 August 2014, 732 SCRA 554.

³⁵ G.R. No. 207992, 11 August 2014, 732 SCRA 554, 576.

³⁶ *People v. Hementiza*, G.R. No. 227398, 22 March 2017, 821 SCRA 470, 494.

³⁷ *People v. Ga-a*, G.R. No. 222559, 06 June 2018, 865 SCRA 220, 260.

³⁸ 630 Phil. 627-655 (2010); G.R. No. 186498, 26 March 2010, 616 SCRA 652, 662.



must be proven as a fact, because the courts cannot presume what these grounds are or whether they even exist.

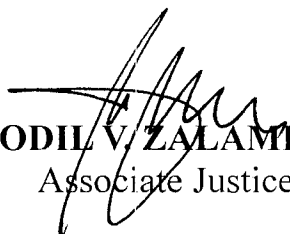
In this case, the saving mechanism of Section 21 cannot be applied as the prosecution not only failed to acknowledge the infirmity, much less provide justification for the breaches in the links of the chain of custody.

Given the foregoing procedural lapses, serious uncertainty hangs over the identity of the seized drug. The prosecution failed to fully prove the elements of the offense charged, creating a reasonable doubt on the criminal liability of the accused-appellant.³⁹ Consequently, there is no recourse but to acquit accused-appellant.

WHEREFORE, the appeal is hereby **GRANTED**. The assailed Decision dated 27 November 2017 rendered by the Court of Appeals in CA-G.R. CR-HC No. 07364 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **ALLAN ALON-ALON y LIZARDA** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any lawful cause.


The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice

³⁹ *People v. Dahil*, 750 Phil. 212-239 (2015); G.R. No. 212196, 12 January 2015, 745 SCRA 221, 248.

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson


(On leave)
ALEXANDER G. GESMUNDO
Associate Justice


ROSMARIE D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

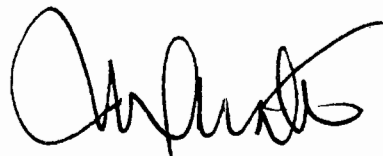
I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice

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MISAEEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

MAR 10 2020

