



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated December 2, 2020, which reads as follows:

“G.R. No. 247717 (*People of the Philippines v. Nardo Bestre y Taceo*). — The present appeal seeks to assail the Decision¹ dated June 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08899 which affirmed the Decision² dated November 17, 2016 of the Regional Trial Court (RTC) of San Jose City, Branch 38 in Criminal Case No. 2441-2012-C, finding Nardo Bestre y Taceo (appellant) guilty beyond reasonable doubt for Illegal Sale of Dangerous Drugs in violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In an Information dated July 30, 2012, appellant was charged with violation of Section 5, Article II of RA 9165, or for the illegal sale of cannabis or *marijuana*, alleged to have been committed as follows:

That on or about the 28th day of July, (sic) 2012 at about 10:00 o'clock in the morning, in Barangay Piut, Carranglan, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously sold, transferred and delivered to a police poseur buyer one (1) compressed brick/bar containing 217.37 grams of dried marijuana fruiting tops wrapped in yellow plastic bag, a dangerous drug, without any permit, license or authority to sell, transfer and deliver the same.

Contrary to law.³

On arraignment, appellant pleaded not guilty and trial ensued. The testimony of Police Senior Inspector Jebbie C. Timario (PSI Timario) was stipulated upon, *viz.*: (i) she is an expert in the field of Forensic Chemistry; (ii) she received the specimen with the markings “NTB” on July 29, 2012 at

¹ Penned by Associate Justice Ramon A. Cruz, with Associate Justices Ramon M. Baro, Jr. and Pablito A. Perez, concurring; *rollo*, pp. 3-15.

² Penned by Presiding Judge Leo Cecilio D. Bautista; CA *rollo*, pp. 76-83-A.

³ *Id.* at 76.

8:50 in the morning from Police Officer 1 Julius Ceasar Ferrer (PO1 Ferrer); (iii) she conducted the examination on the specimen; and (iv) the specimen gave a positive result for marijuana.⁴

The prosecution first presented the Joint Affidavit dated July 29, 2012 of PO1 Ferrer, the *poseur*-buyer, and PO1 Jan Macadangdang (PO1 Macadangdang), who served as backup. In the said Affidavit, it was stated that at 7:00 in the morning of July 28, 2012, PO1 Ferrer and PO1 Macadangdang received information from their asset that a certain Nardo Bestre y Taceo, a.k.a. "Miller," was selling *marijuana* in Barangay Piut. After a briefing to conduct a buy-bust operation, they were given three pieces of ₱100.00 bills as marked money. Later that same morning, the two officers with their civilian asset were approached by appellant at the agreed place in Brgy. Piut. The asset introduced the two officers to appellant as buyers, and the latter asked how much. After agreeing on buying ₱300.00 worth of *marijuana*, appellant went to a nearby hut and brought back a small black pail. From it, appellant handed them a rectangular bar suspected to be *marijuana* wrapped in yellow plastic. As PO1 Ferrer handed him the marked money, PO1 Macadangdang arrested appellant and introduced themselves as police officers.⁵

They brought appellant to the nearby barangay hall, where an inventory was conducted, as witnessed by Antonio De Vera (De Vera) and Jaine B. Eugenio, Sr. (Eugenio), both officials of Brgy. Piut, Jun Jun Sy-Gomez from the media, and Fernando Yango as a representative of the DOJ. At the barangay hall, PO1 Ferrer marked the *marijuana* wrapped in yellow plastic with "NIB." Thereafter, they went to the headquarters with appellant and spent the night there – with the seized item less than two feet away from PO1 Ferrer's bed. The following morning, PO1 Ferrer brought the seized item to the Nueva Ecija Provincial Crime Laboratory for examination by PSI Timario.⁶

PO1 Macadangdang testified and corroborated PO1 Ferrer's testimony that: (i) after conducting the inventory in the barangay hall in Brgy. Piut, they proceeded to their headquarters; (ii) he and PO1 Ferrer spent the night of July 28, 2012 at their headquarters; and (iii) appellant spent the night in detention at their headquarters.

The defense first presented Eugenio, a barangay councilor of Brgy. Piut, as witness. Eugenio stated, among others, that: (i) on July 28, 2012, he was made by the barangay captain, Antonio De Vera, to sign an Inventory Receipt already bearing the latter's signature. He claimed that he did not see PO1 Ferrer, PO1 Macadangdang, and the other witnesses affix their respective signatures in the Inventory Receipt. He also stated that he did not know who made the entries in the said document. Further, Eugenio testified

⁴ *Rollo*, p. 4.

⁵ *Id.* at 5.

⁶ *CA rollo*, pp. 77-78.

that he knew appellant for more than 18 years, he treats all his constituents as friends, and that he signed the Inventory Receipt without reading its contents.⁷

Appellant denied having committed the crime as charged. He testified that on the afternoon of July 27, 2012, he was suddenly and unwillingly taken by police officers to their headquarters in Brgy. San Juan and spent the night there. On July 28, 2012, he was brought back to Brgy. Piut, particularly at the house of his cousin Agnes De Vera, the daughter of barangay captain Antonio De Vera. There, police officers made De Vera and Eugenio sign a document while he was inside the service vehicle. Appellant also claimed that he does not know where PO1 Ferrer and PO1 Macadandang spent the night of July 28, 2012 as they were not with him.⁸

The RTC Decision

In a Decision dated November 17, 2016, the RTC found appellant guilty beyond reasonable doubt for violation of Section 5, Article II of RA 9165 and sentenced him with a penalty of life imprisonment and a fine of ₱500,000.00.⁹

The RTC held that the prosecution was able to prove that the sale actually transpired and was able to present the *corpus delicti* in court – as it ruled that the chain of custody was unbroken and clearly accounted for.¹⁰ The RTC also held that the presentation of the marked money is not required for conviction, and that the mere denial of appellant cannot prevail over the positive testimony of the police officers who are presumed to have performed their duties in a regular manner.¹¹

The CA Decision

In its now assailed Decision, the CA affirmed the Decision of the RTC, and ruled that the integrity and evidentiary value of the *corpus delicti* had been preserved despite the irregularities by which the police officers implemented Section 21, Article II of RA 9165, thereby substantially complying with the chain of custody rule.¹²

The CA held that despite the fact that PO1 Ferrer left the seized item by his bedside for a night and not remembering to whom he gave the seized item for examination, the marking was maintained throughout the process and was positively identified by PSI Timario. The failure to admit the marked money into evidence was not considered fatal as the consummation

⁷ Id. at 79-80.

⁸ Id. at 80-81.

⁹ Id. at 83-A.

¹⁰ Id. at 82.

¹¹ Id. at 83.

¹² *Rolla*, pp. 11-13.

of the sale was sufficiently proven. The CA also gave no moment to the denial of appellant in light of the positive testimony of the police officers.¹³

Hence, this appeal.

In the instant case, appellant argues against his conviction by claiming that the following irregularities had violated the chain of custody rule: (i) the Coordination Form shows that a certain "Agent Joven Sevilla" was not able to sign it; (ii) the Spot Report did not show any proof of receipt by the Provincial Director; (iii) the yellow plastic containing *marijuana* was not immediately marked in his presence, but rather at the barangay hall of Brgy. Piut; (iv) the seized item was kept beside Ferrer while he slept before having been submitted to the crime laboratory; (v) Ferrer cannot recall who received the specimen from him; (vi) when the joint affidavit of Ferrer and Macadangdang was being prepared, the police officers were still looking for representatives from the media and the DOJ; and (vii) he and Eugenio did not witness the inventory process.¹⁴

Issue

The issue for the Court's resolution is whether or not the CA erred in affirming the Decision of the RTC, which found appellant guilty beyond reasonable doubt for violation of Section 5, Article II of RA 9165, or for the illegal sale of *marijuana*.

Our Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹⁵ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.¹⁶

In order to establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.¹⁷ As a general rule, compliance with the chain of custody procedure is **strictly enjoined** as the same has been

¹³ Id. at 14.

¹⁴ Id. at 9-10.

¹⁵ *People v. Carral*, G.R. No. 233883, January 7, 2019, citing *People v. Crispo*, 828 Phil. 416, 429 (2018).

¹⁶ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

¹⁷ *People v. Santos*, G.R. No. 243627, November 27, 2019, citing *People v. Año*, 828 Phil. 439, 448 (2018).

regarded “not merely as a procedural technicality but as a matter of substantive law.”¹⁸

As part of the chain of custody procedure, the law requires, *inter alia*, that the **marking, physical inventory, and photography** of the seized items be conducted **immediately after seizure and confiscation** of the same. In this regard, jurisprudence recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”¹⁹ Section 21 of the Implementing Rules and Regulations (IRR) for RA 9165, under which appellant was indicted, provides for the procedure as follows:

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 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:

(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, 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;** (Emphases and underscoring supplied)

The above-quoted saving clause under the IRR for RA 9165 – which was later adopted into law under RA 10640 – authorizes “substantial compliance” in the procedure on custody and handling of the seized drugs provided that the prosecution satisfactorily proves that: (i) there is a justifiable ground for non-compliance; and (ii) the integrity and evidentiary value of the seized items are properly preserved.²⁰ It should be emphasized, however, that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable

¹⁸ *Matabilas v. People*, G.R. No. 243615, November 11, 2019, citing *People v. Macapundag*, 807 Phil. 234, 244 (2017).

¹⁹ *Id.*, citing *People v. Mamalumpo*, 767 Phil. 845, 855 (2015).

²⁰ *People v. Santos*, supra note 17, citing *People v. Almorfe*, 631 Phil. 51, 60 (2010).

ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.²¹

In this case, Ferrer admitted to the fact that he marked the yellow plastic containing *marijuana* only at the barangay hall of Brgy. Piut and not immediately at the place of its seizure, viz.:²²

Q: Police Officer Ferrer, if the specimen in this case will be shown to you will you be able to identify it?

A: Yes sir.

Q: How will you be able to identify the specimen?

A: I put markings, the initials "NTB" on the plastic itself.

Q: How did you put the marking "NTB" on the plastic sachet?

A: With the use of (sic) a pen (sic) pen Sir.

Q: **Where were you at the time you placed the marking on the plastic sachet?**

A: **At the Brgy. Hall of Brgy. Piut, Carranglan, Nueva Ecija.**
(Emphasis supplied)

From the records, it appears that the RTC and the CA had ruled that there was substantial compliance in the procedure laid out in the Section 21 of the IRR for RA 9165, without the prosecution having proven that there were justifiable grounds in marking and conducting an inventory of the seized drugs at the barangay hall and not at the place of arrest and seizure. In the same vein, the evidence submitted by the prosecution in the courts *a quo* proffers neither any fact to establish the proximity between the place of arrest and the barangay hall nor any justifiable reason as to why the marking and inventory of the seized drug only occurred thereat.

Clearly, the deviation by the police officers from the procedure does not rest on justifiable grounds in order for the saving clause under Section 21 of the IRR for RA 9165 to apply. Notwithstanding any attempt of the prosecution to establish the elements of illegal sale of dangerous drugs under jurisprudence, the failure of the police officers to immediately mark the seized drug at the place of arrest without justifiable grounds casts serious doubt as to the identity of the *corpus delicti* in this case.

Contrary to the findings of the RTC and the CA, the Court finds that there was no substantial compliance in the procedure laid out in Section 21 of the IRR for RA 9165, and that the integrity and evidentiary value of the seized drug constituting the *corpus delicti* in the crime charged have been compromised. Upon this failure by the prosecution to prove the same beyond reasonable doubt, the Court resolves to acquit appellant of the crime charged.

²¹ Id., citing *People v. De Guzman*, 630 Phil. 637, 649 (2010).

²² CA rollo, p. 61.

WHEREFORE, the appeal is **GRANTED**. The Decision dated 19 June 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08899 is hereby **REVERSED** and **SET ASIDE**. Accordingly, appellant Nardo Bestre y Taceo is **ACQUITTED** of the crime charged in Criminal Case No. 2441-2012-C.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Nardo Bestre y Taceo, unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.²⁹ (Leonen, J., on official leave.)

By authority of the Court:

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