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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 8, 2020** which reads as follows:

“G.R. No. 229797 — GERALINE PERPUSE, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

This is a Petition for *Certiorari*¹ (Petition) under Rule 45 of the Rules of Criminal Procedure, assailing the Decision² dated August 16, 2016 and the Resolution³ dated January 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07610, which affirmed the Decision⁴ dated June 16, 2015 of the Regional Trial Court of Tayug, Pangasinan, Branch 51 in Criminal Case No. T-5631, which found petitioner Geraline Perpuse (petitioner) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002.”

Facts

By Information docketed as Criminal Case No. T-5631, petitioner and Alvin Yu (Yu) were charged with violation of Section 5, Article II of RA 9165, thus:

That at about 3:10 o’clock in the afternoon of August 15, 2013, at Brgy. Poblacion, Zone 1, [M]unicipality of San Quintin, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, and helping one another, did then and there willfully, unlawfully, and feloniously sell

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¹ *Rollo*, pp. 17-55.

² *Id.* at 62-83. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting (now a Member of this Court), concurring.

³ *Id.* at 59-60.

⁴ *Records*, pp. 152-164. Penned by Presiding Judge Rusty M. Nara.

one (1) heat sealed plastic sachet with small plastic sachet inside marked as "RPA-1" containing Methamphetamine Hydrochloride or shabu weighing 0.105 gram, a dangerous drug, in exchange of one (1) piece of Five Hundred Peso Bill bearing serial number BQ604949 marked as "JOR".

CONTRARY to Sec. 5, Art. 2 of Republic Act 9165, otherwise known as "Comprehensive Dangerous Drugs Act".⁵

On arraignment, both petitioner and Yu pleaded not guilty.⁶

After the pretrial, the trial on the merits ensued, where, PO2 Rey Andres (PO2 Andres) and Forensic Chemist PCI Emelda Bessara-Roderos (PCI Bessara-Roderos) testified for the prosecution, while petitioner and Yu testified for the defense.

The Prosecution's Evidence

The prosecution alleged that at 2:45 in the afternoon on August 15, 2013, P/Insp. Jervel Rillorta (P/Insp. Rillorta) received a call from a confidential informant (CI) who claimed that he ordered and bought *shabu* worth ₱500.00 from a certain "Mayet" via a text message, and that the delivery would be at the San Quintin Public Market.⁷ P/Insp. Rillorta immediately briefed PO3 Luduvico Pangangaan III (PO3 Pangangaan III), PO2 Andres and other police officers regarding a possible buy-bust operation, with PO2 Andres designated as the poseur-buyer. The police group coordinated with Philippine Drug Enforcement Agency (PDEA)-La Union,⁸ and thereafter, P/Insp. Rillorta, PO3 Pangangaan III and PO2 Andres proceeded to the tipped venue of the operation.

At about 3:10 in the afternoon, petitioner and Yu arrived on a white Yamaha Mio motorcycle and stopped in front of a Petron gas station along Rizal Street, across from where the buy-bust team was situated. Petitioner allegedly alighted from the motorcycle and walked towards PO2 Andres and the CI. When petitioner reached them, the CI informed petitioner that PO2 Andres was the interested buyer, after which the latter gave petitioner the marked ₱500.00 bill, in exchange of which, petitioner handed PO2 Andres a heat-sealed transparent plastic sachet containing 0.105 gram of white crystalline substance.⁹

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⁵ Id. at 1; emphasis and italics omitted.

⁶ Id. at 19-20.

⁷ Id. at 153.

⁸ Coordination Form with Control Number PDEA 0813-00027; id. at 8.

⁹ Id. at 153-154.

After the exchange, PO2 Andres tipped his bull cap to signal to the rest of the buy-bust team that the sale was consummated. He then introduced himself to petitioner as a police officer, read petitioner her constitutional rights, arrested her with the assistance of PO3 Pangangaan III, and recovered from her the marked money.¹⁰

The police allegedly saw that Yu attempted to drive away before he was likewise apprehended for conspiracy. Following their arrests, petitioner and Yu, together with the heat-sealed sachet, the marked money, petitioner's Cherry Mobile cellular phone and Yu's Yamaha Mio motorcycle were indorsed to the San Quintin Police Station. The contents of the recovered heat-sealed sachet were later forwarded to the Philippine National Police Crime Laboratory for examination,¹¹ where the contents tested positive for Methamphetamine Hydrochloride.¹²

After the admission of the prosecution's final exhibits, petitioner and Yu filed a Demurrer to Evidence,¹³ which the trial court partially granted through its Resolution¹⁴ dated August 26, 2014, when it acquitted Yu for insufficiency of evidence,¹⁵ but sustained the charge with respect to petitioner.¹⁶

Thereafter, the trial on the merits continued, where the defense presented petitioner and Yu.

The Defense's Evidence

Petitioner testified that on August 15, 2013, at around 12:50 in the afternoon, while she and Yu stopped by a gas station near the San Quintin Public Market, and as she was walking towards the store to buy soda, a male person wearing civilian clothes and reeking of the smell of liquor suddenly approached her and held her up by the collar of her jacket.¹⁷ The person, who she would later identify as PO3 Pangangaan III, walked her to a parked private red car driven by

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¹⁰ Id. at 154.

¹¹ Laboratory Examination Request dated August 15, 2013; id. at 5.

¹² Chemistry Report No. D-094-2013-U; id. at 57, 154.

¹³ Id. at 114-119.

¹⁴ Id. at 123-127.

¹⁵ Id. at 127; With the trial court ruling in part: "In the case at bar, the Prosecution has shown ample competent evidence to sustain the conviction of accused Perpuse. On the other hand, the Court remains apprehensive as to the actual participation or involvement of accused Yu. It was clear from the testimony of PO2 Andres that accused Yu was not committing, about to commit or has committed any illegal act."

¹⁶ Id.

¹⁷ Id. at 156-157.

P/Insp. Rillorta and brought her to the police station, all the while telling petitioner that they just had to ask her questions there.¹⁸ At the station, the police removed the jacket she was wearing, frisked her, and asked about the whereabouts of one "Mayet" who was her aunt and was wanted for selling *shabu*. Petitioner kept insisting that she did not know where Mayet was, and that the last time she communicated with Mayet was on August 13, when the latter asked for petitioner's assistance in bringing Mayet's daughter to the hospital.¹⁹ Petitioner likewise insisted that no one approached her that day except for PO3 Pangangaan III.

Afterwards, petitioner stepped out of the room and saw her jacket laid on top of a table, with a single transparent plastic sachet beside it. Petitioner and Yu remained in the station, and at past 8:00 o'clock in the evening, they were awakened by the police who told them that there were representatives from the media. At that point she also saw the ₱500.00 bill that was supposedly the marked money used to bust them, as well as her Cherry Mobile cellular phone which the police confiscated from her earlier. Petitioner insisted that contrary to what the police were accusing her of, she was not involved in dealings with illegal drugs, and that she merely made beads for a living.²⁰ Further, during the cross-examination of Yu, he added that perhaps petitioner was mistaken for her aunt, who was about the same height and built as her.²¹ Nevertheless, despite petitioner's objections, she remained detained, and a case for sale of illegal drugs was levelled against her.

The Trial Court's Ruling

On June 16, 2015, the trial court rendered its Decision²² convicting petitioner, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused **GERALINE PERPUSE** guilty beyond reasonable doubt of the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

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¹⁸ Id. at 157.

¹⁹ Id. at 157-158.

²⁰ Id.

²¹ Id. at 160.

²² Supra note 4.

Further, let the physical evidence subject matter of this case be confiscated and forfeited in favor of the Government and the same be turned over to PDEA for proper disposition.

SO ORDERED.²³

The trial court ruled that all the elements of the crime were sufficiently established,²⁴ the chain of custody was preserved,²⁵ the arresting officers followed proper procedure, and any lapse committed on their part was not fatal to the merits of the prosecution's case.²⁶

Aggrieved, petitioner filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision,²⁷ the CA affirmed the trial court's conviction of petitioner. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, We **AFFIRM** the Decision dated June 16, 2015 of the RTC, First Judicial Region, Branch 51, Tayug, Pangasinan in Criminal Case No. T-5631.

SO ORDERED.²⁸

The CA ruled that the trial court rightly dismissed the Demurrer to Evidence with respect to petitioner, as it found that the prosecution offered sufficient evidence to establish petitioner's guilt. The CA likewise held that the prosecution satisfactorily discharged the burden of proving the elements of illegal sale of dangerous drugs which, in turn, placed petitioner's guilt beyond reasonable doubt.²⁹

The CA was unconvinced by petitioner's denial, dismissing the same as "intrinsically weak"³⁰ and self-serving apart from the credibility of the corroborative evidence. It likewise found petitioner's allegation of mistaken identity immaterial against PO2 Andres' positive testimony that petitioner was caught in *flagrante delicto*.³¹

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²³ Records, pp. 163-164.

²⁴ Id. at 160-162.

²⁵ Id. at 162.

²⁶ Id. at 162-163.

²⁷ Supra note 2.

²⁸ Rollo, p. 82.

²⁹ Id. at 74-75.

³⁰ Id. at 76.

³¹ Id. at 77.

Petitioner also failed to persuade the CA that the arresting officers fatally fell short of complying with Section 21 of RA 9165, as the CA instead observed that “a perfect chain is not always the standard”³² as it is almost always impossible to achieve. It further noted that the non-compliance with the Chain of Custody Rule was nevertheless sufficiently justified by the police officers, and therefore did not weaken the prosecution’s case.³³

Hence, the instant Petition.

Issue

The sole issue for the Court’s resolution is whether the lower courts erred in convicting petitioner for violating Section 5, Article II of RA 9165.

The Court’s Ruling

Preliminarily, the Court notes that petitioner availed of the wrong mode of appeal with the present Petition under Rule 45, the proper remedy being an ordinary appeal, which should have been undertaken by a mere filing of a notice of appeal with the CA.

Nevertheless, in the interest of justice, and in consideration of the gravity of life imprisonment as the penalty meted out to petitioner, the Court will treat this Petition as an ordinary appeal in order to finally dispose of it.

The Petition is meritorious, and the positively unjustified non-preservation of the chain of custody in petitioner’s arrest merits no other conclusion than her acquittal.

Criminal cases over transactions involving illegal drugs are prone to fabricated guilt and unwarranted convictions, and with the often unqualified penalties that affect no less than a person’s very liberty, the safeguards set up by the laws must be observed with utmost care, lest a person be mistakenly incarcerated for life.

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³² Id. at 80.

³³ Id. at 80-81.

In the case at bar, the particular safeguard, albeit often bent to the point of near-negation, is the Chain of Custody Rule, provided for in Section 21, paragraph 1³⁴ of RA 9165, which requires, among others, the immediate physical inventory of the seized items at the place of seizure and in the presence of the person/s from whom the items are seized (or their representatives), with a representative from the media and the Department of Justice (DOJ), and any elected public official, who are also required to sign the inventory. In addition, Section 21(a)³⁵ of the Implementing Rules and Regulations (IRR) of RA 9165 prescribes that non-compliance with these requirements may only be allowed under justifiable grounds, and for as long as the integrity and the evidentiary value of the seized items are preserved.

The Chain of Custody Rule as embodied in the above-cited provisions pertains to the preservation of the *corpus delicti*, which alone spells the difference between innocence and guilt in drug-related cases. The chain traces the custody of the seized illegal drug through four turnovers, beginning from the point of seizure, followed by the turnover of the same from the apprehending officer to the

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³⁴ 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 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[.]

³⁵ 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:

(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[.]

investigating officer, and then from the investigating officer to the forensic chemist for laboratory examination and then, finally, from the forensic chemist to the court.

The securing of this four-link chain is crucial for the prosecution of the crime, and has always called for strict observance, in order to attain for the body of the crime "an acceptable level of certainty."³⁶

Furthermore, although it has been accepted in jurisprudence that a dogmatic adherence to this Chain of Custody Rule is sometimes unachievable given a wide range of varying situations, the leniency may only be granted when properly justified, and with the integrity and evidentiary value of the seized items preserved, as is provided in the last paragraph of Section 21(a) of the IRR of RA 9165.

In the present case, the chain of custody was not complied with by the arresting officers, and this non-compliance was not justified, let alone explained. Particularly, the chain of custody in the case at bar was breached on two main links, namely at the initial point of seizure, and during the turnover from the investigating officer to the forensic chemist for laboratory examination.

Nowhere in the records was there even a mention of the presence of the required witnesses under Section 21, *i.e.*, the representatives from the DOJ, the media and any elected official during the inventory of the seized items. PO2 Andres merely said that he marked the items at the police station, without even testifying that the same was done in the presence of the insulating witnesses, let alone the petitioner.

Forensic Chemist PCI Besarra-Roderos categorically testified before the trial court that she was not the one who received the request for examination, nor was she the one who admitted the specimen.³⁷

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³⁶ *Fuentes v. People*, G.R. No. 228718, January 7, 2019.

³⁷ TSN, November 28, 2013, p. 7:

ATTY. HAYES-ALLEN:

Permission?

Q Madam, the request, you are not the one who received it?

WITNESS:

A Yes, sir.

ATTY. HAYES-ALLEN:

Q It was received at 6:55 a.m.?

A Yes, ma'am.

Q Do you know who turned this over to your office? Who brought these drugs at your office?

A It was PO2 Rey Andres, your Honor.

Q What do you mean? You stayed in the office at 6:55 a.m.?

A Yes, ma'am. (Emphasis supplied.)

She likewise testified that she did not witness the requesting party mark the specimen for examination,³⁸ and that she did not see nor could she vouch for all the other persons who might have had custody over the specimen from the time it arrived in the laboratory of her office up to the time when she gained custody of the same.³⁹

The seizures of and custody over the seized items, including the 0.105 gram of *shabu*, are therefore invalid and void, and thus, left the prosecution no more evidence on which to base petitioner's conviction.

WHEREFORE, premises considered, the Petition is **GRANTED** and the Decision dated August 16, 2016 and Resolution dated January 31, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07610 are hereby **REVERSED** and **SET ASIDE**. Petitioner Geraline Perpuse is hereby **ACQUITTED** of the crime charged for failure of the prosecution to prove her guilt beyond reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

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³⁸ TSN, November 28, 2013, pp. 7-8:

ATTY. HAYES-ALLEN:

Q You mentioned earlier that the black marking was from the requesting party, right ma'am?

A Yes, ma'am.

ATTY. HAYES-ALLEN:

Q You did not see those markings written or marked by the requesting party?

WITNESS:

A Yes, ma'am. (Emphasis supplied.)

³⁹ TSN, November 28, 2013, p. 8:

ATTY. HAYES-ALLEN:

Q You mentioned a while ago you turned over the subject drugs to your evidence custodian, is that right, madam?

A Yes, ma'am.

Q In the meantime this subject specimen was kept by him?

A Yes, ma'am.

Q So from August 15 to this date, these subject drugs were in your office?

A Yes, ma'am.

Q It was only this morning that you received this subject drugs?

A I retrieved the specimen last Monday, ma'am.

Q Of course when you examined you do not know the people really involved?

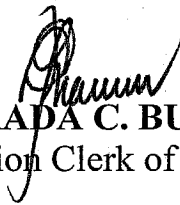
A Yes, ma'am.

Q You haven't even seen them, correct?

A Yes, ma'am. (Emphasis supplied.)

SO ORDERED.” Lopez, J., on official leave.

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{off 1128}
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