



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**THE PEOPLE OF THE
PHILIPPINES,**
Plaintiff-Appellee,

G.R. No. 242516

Present:

— *versus* —

PERALTA, *CJ.*, Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

**ZAINODIN GANDAWALI y
MAWARAO, JENELYN
GUMISAD y CABALHIN, and
NURODIN ELIAN y
KATONG,**
Respondents.

Promulgated:

JUN 08 2020

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R E S O L U T I O N

LOPEZ, J.:

The conviction of Zainodin Gandawali, Jenelyn Gumisad, and Nurodin Elian for illegal sale of dangerous drugs is the subject of review in this motion for reconsideration¹ assailing the Court's Resolution² dated July 15, 2019, which affirmed the Court of Appeals' Decision³ dated May 29, 2018 in CA-G.R. CR HC No. 09135.

ANTECEDENTS

On October 4, 2014, the District Anti-Illegal Drugs Special Operations Task Group of Camp Karingal, Quezon City planned a buy-bust operation against Zainodin, Jenelyn, and Nurodin based on a tip that they are selling

¹ Rollo, pp. 34-46.

² Id. at 49.

³ Id. at 2-12. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Sesinando E. Villon and Maria Filomena D. Singh.

shabu. After the briefing, PO3 Napoleon Zamora was designated as the poseur-buyer, PO3 Joel Diomampo as back-up, and the other team members as perimeter guards. The confidential informant arranged a meeting with Zainodin, Jenelyn, and Nurodin in SM Fairview. However, the transaction was moved the following day because the order was not yet available.⁴

On October 5, 2014, about 3:00 o'clock in the afternoon, the entrapment team together with the informant went to SM Fairview food court. Thereat, the informant introduced PO3 Zamora to Zainodin, Jenelyn, and Nurodin. PO3 Zamora told Zainodin that he would buy P75,000 worth of shabu. Thus, Nurodin handed to PO3 Zamora a plastic sachet containing white crystalline substance. Jenelyn commented that they are selling good quality shabu. Upon receipt of the drugs, PO3 Zamora gave Zainodin the boodle money. At that moment, PO3 Zamora scratched his head, which served as the pre-arranged signal that the transaction has been consummated. Thus, the rest of the entrapment team rushed in and arrested Zainodin, Jenelyn, and Nurodin. Immediately, PO3 Zamora marked the plastic sachet.⁵

Thereafter, the mall security guard requested the team to leave the area because a crowd is forming and their presence is starting to cause a commotion. The police officers then proceeded to Greater Lagro Barangay Hall where they conducted an inventory and photograph of the seized item. Afterwards, PO3 Zamora personally delivered the marked item to PCI Anamelisa Bacani of the Quezon City District Crime Laboratory. After examination, the substance tested positive for methamphetamine hydrochloride.⁶ Zainodin, Jenelyn, and Nurodin were then charged with violation of Section 5, Article II of R.A. No. 9165 before the Regional Trial Court docketed as Criminal Case No. R-QZN-14-10225-CR, to wit:

“That on or about the 5th day of October 2014, in Quezon City, Philippines, the accused, conspiring, confederating and mutually helping one another, without lawful authority, did then and there willfully, unlawfully, sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: twenty-four point sixty three (24.63) grams of methamphetamine hydrochloride, a dangerous drug.”⁷

Zainodin denied the accusation and claimed that he was with Jenelyn in SM Fairview food court. After using the restroom, several men declared themselves as police officers and arrested him. Jenelyn approached him but she too was handcuffed. They were brought to Camp Karingal. The police officers demanded P300,000 in exchange for their liberty. The amount was later reduced to P100,000.00 and then P50,000.00. Unable to produce the money, they were brought to the barangay hall where they were

⁴ Id. at 3-4

⁵ Ibid.

⁶ Id. at 4-5.

⁷ Records, pp.1-2.

photographed. The next day, they were subjected to inquest proceedings.⁸ On the other hand, Nurodin denied any relationship with Zainodin and Jenelyn and averred that he was only strolling in SM Fairview to buy personal items. Suddenly, unidentified men forcibly took him to Camp Karingal and demanded P300,000. Since he failed to produce the money, he was brought to the barangay hall and was placed under inquest proceedings.⁹

On March 14, 2017, the RTC convicted Zainodin, Jenelyn, and Nurodin of illegal sale of dangerous drugs. It gave credence to the prosecution's version as to the transaction that transpired between them and the poseur buyer.¹⁰ On May 29, 2018, the CA affirmed the RTC's findings and ruled that the prosecution presented an unbroken chain of custody of dangerous drugs. The absence of a representative of the National Prosecution Service or the media during the conduct of physical inventory and photograph did not compromise the identity and integrity of the seized item.¹¹

On July 15, 2019, we dismissed the appeal of Zainodin, Jenelyn, and Nurodin for their failure to show how the CA committed any reversible error. Aggrieved, they sought a reconsideration arguing that the police officers did not observe the proper handling and custody of the seized item in the course of the buy-bust operation.

RULING

We acquit.

In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.¹² Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.¹³ Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.¹⁴ Here, the records reveal a broken chain of custody.

Foremost, the absence of a representative of the National Prosecution Service or the media as an insulating witness to the inventory and photograph

⁸ Rollo, pp. 5

⁹ Ibid.

¹⁰ CA Rollo, pp. 55-66.

¹¹ Rollo, pp. 2-12.

¹² *People v. Partoza*, G.R. No. 182418, May 8, 2009.

¹³ *People v. Ismael y Radang*, G.R. No. 208093, February 20, 2017.

¹⁴ *People v. Bugtong y Amoroso*, G.R. No. 220451, February 26, 2018.



of the seized item¹⁵ puts serious doubt as to the integrity of the first link. We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.¹⁶ In *People v. Lim*,¹⁷ we explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Emphasis in the original)

Later, in *People v. Caray*,¹⁸ we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule under Section 21 of R.A. No. 9165. Similarly, in *Matabilas v. People*,¹⁹ sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

¹⁵ The offense was allegedly committed on October 5, 2014. Hence, the applicable law is R.A. No. 9165, as amended by R.A. No 10640,¹⁵ which mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

¹⁶ *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit y Casilang*, G.R. No. 232381, August 1, 2018.

¹⁷ G.R. No. 231989, September 4, 2018.

¹⁸ G.R. No. 245391, September 11, 2019.

¹⁹ G.R. No. 243615, November 11, 2019.

In this case, only an elected public official signed the inventory of evidence. There was no attempt on the part of the buy-bust team to comply with the law and its implementing rules. The operatives likewise failed to provide any justification showing that the integrity of the evidence had all along been preserved. They did not describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Indeed, PO3 Diomampo and PO3 Zamora acknowledged the importance of the presence of insulating witness. Yet, they did not offer any justification for non-compliance. Their testimonies show on the part of the buy-bust team an utter disregard of the required procedure laid down in Section 21 of R.A. No. 9165 which created a huge gap in the chain of custody, *viz.*:

[Testimony of PO3 Diomampo]

Q: In this inventory, Mr. Witness, is supposed to be signed by the accused, correct, under Section 21 of R.A. 9165, Yes or no?

A: I do not know, **but I know it is to be witnessed by elective Barangay Official, DOJ representative and Media representative, sir.**

Q: Now, going over this inventory that you prepared, was there any showing that this was witnessed by a Media representative?

A: None, sir.

Q: Was there any showing that the same was, likewise, witnessed by the representative from the Department of Justice.

A: None, sir.

Q: And going over again, this was not signed by the accused in this case or any of their representatives, correct?

A: Yes, sir.²⁰

[Testimony of PO3 Zamora]

Q: Who was present during the inventory, Mr. witness?

A: The investigator, the three (3) accused, the barangay chairman, I, PO3 Diomampo and the rest of the team, sir.

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Q: And there is also a signature above the name Punong Barangay Renato Galimba, whose signature is this?

A: That's the signature of the barangay captain of Brgy. Greater Lagro, sir.

Q: How do you know that this is his signature?

A: I saw him when he affixed his signature on the document.

FISCAL: the signatures of Officer Napoleon Zamora, PO3 Diomampo and the Punong Barangay, your Honor, were respectively marked as Exhibit E-1, E-2 and E-3, your Honor.

²⁰ TSN dated May 7, 2015, pp. 18.

Q: Why there are no signatures from the representatives of the media and DOJ, Mr. Witness?

A: I can no longer recall, sir.”²¹

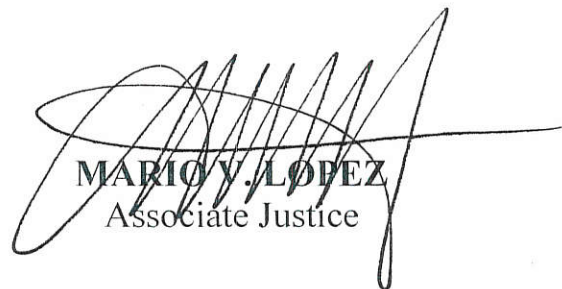
Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.²² Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.²³

We reiterate that the provisions of Section 21 of R.A. No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Zainodin, Jenelyn, and Nurodin must be acquitted of the charge against them given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the motion for reconsideration is **GRANTED**. The Court's July 15, 2019 Resolution is **REVERSED** and **SET ASIDE**. Zainodin Gandawali, Jenelyn Gumisad, and Nurodin Elian are **ACQUITTED** in Criminal Case No. R-QZN-14-10225-CR and are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City, and to the Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Director and the Superintendent are directed to report to this Court the action taken within five days from receipt of this Resolution.

SO ORDERED.


MARIO V. LOPEZ
Associate Justice

²¹ TSN dated July 29, 2015, pp. 4-5.

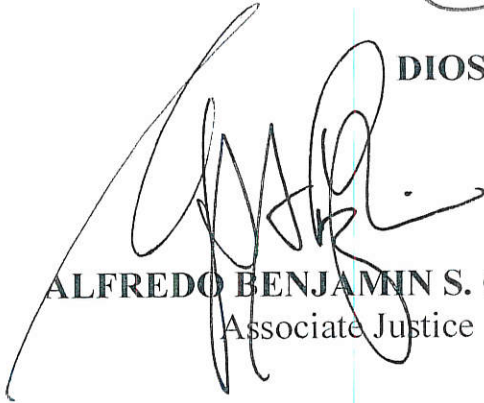
²² *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Lopez v. People*, G.R. No. 172953, April 30, 2008.

²³ *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008.

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



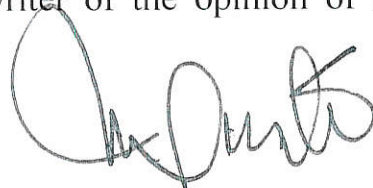
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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

