



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 214759**
Plaintiff-Appellee,

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

Promulgated:

DINA CALATES y DELA CRUZ,
Accused-Appellant.

April 4, 2018

X-----*Dina Calates y dela Cruz*-----X

DECISION

BERSAMIN, J.:

The lack of any justification tendered by the arresting officers for any lapses in the documentation of the chain of custody of confiscated dangerous drugs warrants the acquittal of the accused in a prosecution for the illegal sale of dangerous drugs on the ground of reasonable doubt. The accused has no burden to prove her innocence.

The Case

We review the decision promulgated on May 29, 2014,¹ whereby the Court of Appeals (CA) affirmed the conviction for a violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) of accused Dina Calates y dela Cruz (Dina) handed down by the Regional Trial Court (RTC) in Bacolod City through its judgment rendered in Criminal Case No. 03-24786 on April 21, 2009.²

¹ *Rollo*, pp. 4-18; penned by Associate Justice Marilyn B. Lagura-Yap, concurred in by Associate Justice Edgardo L. De Los Santos and Associate Justice Jhosep Y. Lopez.

² *CA rollo*, pp. 14-23; penned by Presiding Judge Edgar G. Garvilles.

Antecedents

On April 24, 2003, the accused was charged in the RTC with violation of Section 5 of R.A. No. 9165 under the following information docketed as Criminal Case No. 03-24786, to wit:

That on or about the 22nd of April, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another; distribute, dispatch in transit or transport any dangerous drug, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur-buyer in a buy-bust operation, one heat-sealed transparent plastic sachet containing methylamphetamine hydrochloride or shabu, a dangerous drug weighing 0.03 gram, in exchange for a price of ₱100.00 in marked money of ₱100.00 bill with Serial No. P915278, in violation of the aforementioned law.

CONTRARY TO LAW.³

The CA summarized the antecedent facts as follows:

The evidence for the prosecution is summarized as follows:

In the morning of April 20, 2003 Insp. Jonathan Lorilla received an information from a reliable informant that alias “Dangdang” Calates is engaged in sale of illegal drug activities. Insp. Lorilla verified if the information is true through a police asset. During the briefing, PO1 Sonido acted as the poseur-buyer with the asset, Insp. Lorilla as team leader and with PO2 Malate, PO2 Villeran, PO2 Perez and PO2 Belandrez as back-up security. About 10:50 or 10:55 am of April 22, 2003, the group all in civilian clothes, proceeded to 27th Calamba Street, Purok Sigay, Barangay 2. PO1 Sonido and the asset went ahead of the group. They entered the place, a woman with “semi-calbo” and sporting blond hair, met the duo and asked if they would buy shabu. PO1 Sonido and the asset, alias “Toto”, wiped their nostrils with their right finger, meaning their answer to the question is “yes”. The accused extended her left hand to receive the marked money which PO1 Sonido gave her (accused), while the latter took a small sachet of suspected shabu from her right pocket and gave it to PO1 Sonido. Thereafter, PO1 Sonido immediately arrested the accused, identified himself as police officer, PO1 Sonido informed her of the reason of her apprehension and her rights to remain silent and counsel. When the other member of the team saw that the accused was arrested, they rushed towards PO1 Sonido and rendered assistance by putting the accused to a manacle.

The marked money was recovered and the sachet of shabu was marked “ASS” which stands for Alain S. Sonido. Thereafter, the incident was recorded in the police blotter and the plastic sachet of shabu was brought to the PNP Crime Laboratory.

³ *Rollo*, pp. 12-13.

The evidence for the defense is also summarized as follows:

Accused Dina Calates claimed that at 11:00 o'clock in the morning of April 22, 2003, she was cooking food for lunch at her residence in 27th Calamba Extension, Bacolod City. During that time a commotion took place outside her house. Together with her husband Joemar and a certain Luz, the accused went outside to see what was happening. They saw a person lying face down and handcuffed, 15 meters away from their location. The man was "Limuel Canlas". He was surrounded by about eight persons and among them, were Police Officers Dennis Belandrez and Jonathan Lorilla. The accused went back to her house and when she went outside again to pick up her son's slippers, Insp. Lorilla suddenly handcuffed her from behind. The latter asked Insp. Lorilla why she was arrested. The latter replied "you are also selling shabu". The policemen went inside and searched her house without search warrant, but they recovered nothing. The accused was brought to BAC-Up 2 (police station).⁴

Judgment of the RTC

As stated, the RTC convicted the accused through the decision dated April 21, 2009, disposing thusly:

WHEREFORE, finding accused DINA CALATIS y De La Cruz alias "Dangdang" guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. No. 9165 (Sale, Delivery, etc. of [D]angerous Drugs) as herein charged, judgment is hereby rendered sentencing her to suffer LIFE IMPRISONMENT and to pay a fine of ₱500,000.00. She is also to bear the accessory penalty prescribed by law. Cost against accused.

The one (1) sachet of shabu (Exh. "B-3"-0.03 gram) brought/recovered from accused, being a dangerous drug, is hereby ordered confiscated and/or forfeited in favor of the government and to be forthwith delivered or turned over to the Philippine Drug Enforcement Agency (PDEA) provincial office for immediate destruction or disposition in accordance with law.

The immediate commitment of accused to the national penitentiary is likewise hereby ordered.

SO ORDERED.⁵

The RTC observed that the testimonies of the Prosecution's witnesses were credible; that the Prosecution thereby established all the elements of the crime of illegal sale of dangerous drugs defined and punished under Section 5 of R.A. No. 9165; and that Dina's denial did not overcome her positive identification as the drug pusher by the Prosecution's witnesses.

⁴ Id. at 5-7.

⁵ CA *rollo*, pp. 22-23.

Decision of the CA

On appeal, the CA affirmed the conviction upon noting that the Prosecution had successfully proved all the elements of the crime charged; that the Prosecution had showed that the police authorities had preserved the integrity and evidentiary value of the dangerous drug confiscated from the accused until its presentation as evidence in court; that the alleged inconsistency in the testimonies of the Prosecution's witnesses became immaterial considering that Dina had personally sold the dangerous drug to PO1 Sonido; that there had been no gap or missing link in the chain of custody of the confiscated drug despite the fact that no inventory and pictures had been taken; and that the lack of inventory and photographing was not fatal.⁶ The *fallo* reads:

WHEREFORE, the April 21, 2009 Decision of the Regional Trial Court, Branch 47, Bacolod City in Criminal Case No. 03-24786 convicting the accused appellant Dina Calates y De La Cruz of Violation of Section 5, Article II of R.A. 9165 or the Comprehensive Dangerous Drugs Act is **AFFIRMED**. With costs against the accused-appellant.

SO ORDERED.⁷

Hence, this appeal.

Issues

For purposes of this appeal, the Office of the Solicitor General⁸ and the Public Attorney's Office⁹ manifested that they were no longer filing their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

In her appellant's brief, Dina argues that the Prosecution did not prove her guilt beyond reasonable doubt; that the testimonies of the Prosecution's witnesses had doubtful credibility; that there had been another drug operation at the same place, date and time that led to the arrest of one Cromwell Canlas; that it was improbable for the police operatives to have conducted the operation against Canlas and to still conduct another operation against her just five minutes later on; that the identity of the *corpus delicti* had been compromised by the lack of the inventory and the non-taking of photographs in her presence, and in the presence of any representative from the media and the Department of Justice, as required by Section 21 of R.A. No. 9165; that the Prosecution did not even bother explaining why the

⁶ Supra, note 1.

⁷ Id. at 17.

⁸ *Rollo*, pp. 27-28.

⁹ Id. at 32-33.

procedures prescribed by the law had not been complied with; and that because of the irregularities, substantial gaps attended the chain of custody of the seized drug and rendered the identity of the drug highly suspicious.

In response, the OSG maintains that the entrapment of Dina was with due regard for her rights under the law; that the police operatives properly performed their duties in the conduct of the operation against her; that there was no reason to doubt the credibility of the testimonies of the Prosecution's witnesses; and that the non-compliance with the procedure laid down in Section 21 of R.A. No. 9165 did not necessarily render the seizure of the drug illegal or cast doubt on the identity of the drug because the Prosecution was able to show that there had been no gaps in the chain of custody starting from the initial marking until the eventual presentation of the drug in court.

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 not only of proving the elements of the offenses of sale of dangerous drug and of the offense of illegal possession of dangerous drug, but also of proving the *corpus delicti*, 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 a crime was actually committed. As applied to a particular offense, it means *the actual commission by someone of the particular crime charged*. The *corpus delicti* is a compound fact made up of two things, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result. The dangerous drug itself is the very *corpus delicti* of the violation of the law prohibiting the illegal sale or possession of dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* when the drug is missing, or when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts about the authenticity of the evidence presented in court.¹⁰ As such, the duty to prove the *corpus delicti* of the illegal sale or possession of dangerous drug is as important as proving the elements of the crime itself.

The arrest of Dina following the seizure of the illegal substance resulted from the buy-bust operation. Although buy-bust operations have become necessary in dealing with the drug menace, it has also been acknowledged that buy-bust operations were susceptible to abuse by turning them into occasions for extortion.¹¹ Addressing the possibility of abuse, Congress prescribed procedural safeguards to ensure that such abuse would

¹⁰ *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 531-532.

¹¹ *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266-267.

be circumvented. The State and its agents are thereby mandated to faithfully observe the safeguards in every drug-related operation and prosecution.¹²

The procedural safeguards cover the seizure, custody and disposition of the confiscated drug. Section 21 of R.A. No. 9165, as amended, relevantly provides:

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 person/s 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;**

x x x x

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

x x x x

(a) The apprehending office/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**

¹² *Reyes v. Court of Appeals*, G.R. No. 180177, April 18, 2012, 670 SCRA 148, 158.

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 seized drugs, controlled chemicals or plant sources of dangerous drugs or laboratory equipment, from the time of seizure or confiscation to the time of receipt in the forensic laboratory, to the safekeeping until 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.¹³ There is no denying that 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.

A review of the records reveals that the non-compliance with the procedural safeguards prescribed by law left serious gaps in the chain of custody of the confiscated dangerous drug.

To start with, PO1 Sonido, who testified having marked the confiscated drug at the place of arrest, did not claim that he did the marking in the presence of Dina. The unilateral marking engendered doubt about the integrity of the evidence presented during the trial, for determining if the drug he thereby marked was the same drug confiscated from Dina became literally impossible.¹⁴

Secondly, although P/Insp. Jonathan Lorilla attested on cross-examination that an inventory of the confiscated drug had been conducted, his testimony had no corroboration in the records. That he was also unsure if photographs of the confiscated drug had been taken in the presence of Dina accentuated the non-observance of the safeguards. At the very least, his

¹³ Section 1(b), Dangerous Drugs Board Regulation No. 1, Series of 2002.

¹⁴ See *People v. Zakaria*, G.R. No. 181042, November 26, 2012, 686 SCRA 390, 401.

declared uncertainty reflected the inexcusability of the oversight on the part of the apprehending lawmen regarding the safeguards considering that the arrest of Dina had been effected during the pre-planned buy-bust operation.¹⁵ Worse, the lack of the inventory and his professed uncertainty about the taking of photographs in the presence of Dina could only mean that no inventory and photograph had been taken, in violation of Section 21 of R.A. No. 9165.

The Court has consistently reminded about the necessity for the arresting lawmen to comply with the safeguards prescribed by the law for the taking of the inventory and photographs. The safeguards, albeit not absolutely indispensable, could be dispensed with only upon justifiable grounds. Indeed, as pronounced in *People v. Pagaduan*,¹⁶ and other rulings of the Court, the deviations from the standard procedure dismally compromise the integrity of the evidence, and the only reason for the courts to overlook the deviations is for the Prosecution to recognize the deviations and to explain them in terms of their justifiable grounds, and to show that the integrity and evidentiary value of the evidence seized were nonetheless substantially preserved. Any shortcoming on the part of the Prosecution in this regard is fatal to its cause despite the saving clause stated in Section 21 of R.A. No. 9165, *supra*, precisely because:

In the present case, the prosecution did not bother to offer any explanation to justify the failure of the police to conduct the required physical inventory and photograph of the seized drugs. The apprehending team failed to show why an inventory and photograph of the seized evidence had not been made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). **We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. In other words, the justifiable ground for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.**¹⁷ [Bold emphasis supplied]

The records have been vainly searched for the credible justification for the entrapment team's non-compliance with the safeguards set by law. The absence of the justification accented the gaps in the chain of custody, and should result in the negation of the evidence of the *corpus delicti* right from the outset. Clearly, the Prosecution did not discharge its burden to prove the guilt of Dina beyond reasonable doubt.

¹⁵ TSN, August 2, 2004, p. 18.

¹⁶ G.R. No. 179029, August 9, 2010, 627 SCRA 308.

¹⁷ *Id.* at 322.

Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.¹⁸ On the other hand, a *reasonable doubt of guilt*, according to *United States v. Youthsey*:¹⁹

x x x is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake.

With the failure of the Prosecution to establish her guilt beyond reasonable doubt, the acquittal of Dina should follow. That she might have actually committed the imputed crime is of no consequence, for she had no burden to prove her innocence, which was presumed from the outset.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 29, 2014 by the Court of Appeals in CA-G.R. CR-HC No. 01035; **ACQUITS** accused **DINA CALATES y DELA CRUZ** for failure of the Prosecution to prove her guilt beyond reasonable doubt; and **DIRECTS** her **IMMEDIATE RELEASE** from the Correctional Institution for Women in Mandaluyong City unless she is confined thereat for another lawful cause.

Let a copy of this decision be transmitted to the Superintendent of the Correctional Institution for Women Bureau of Corrections, Mandaluyong City, for immediate implementation, with the directive to report the action taken to this Court within five days from receipt of this decision.


SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice


¹⁸ Section 2, Rule 133 of the *Rules of Court*.

¹⁹ 91 Fed. Rep. 864, 868.


WE CONCUR:



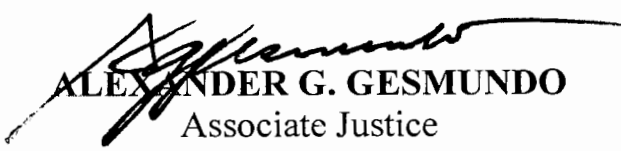
PRESBITERO J. VELASCO, JR.
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



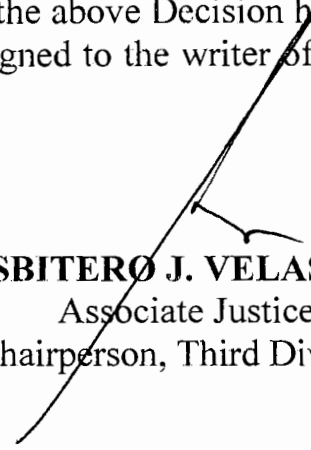
SAMUEL R. MARTIRES
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION


I attest 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.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.



ANTONIO T. CARPIO
Acting Chief Justice