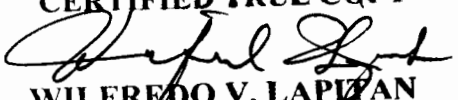




Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY

WILFREDO V. LAPID
 Division Clerk of Court
 Third Division

MAR 23 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 219174**
 Plaintiff-Appellee,

Present:

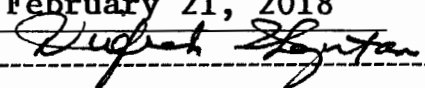
- versus -

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

Promulgated:

ALVIN VELASCO y HUEVOS,
 Accused-Appellant.

February 21, 2018



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DECISION

BERSAMIN, J.:

The regularity of the performance of official duty on the part of the arresting officers during the buy-bust operation and its aftermath cannot be presumed when the records do not contain any explanation why the requirements of Section 21 of Republic Act No. 9165 (*The Comprehensive Dangerous Drugs Act of 2002*) were not complied with. The incrimination of the accused thereby becomes doubtful, and his acquittal of the charge of illegal selling of dangerous drugs should follow.

The Case

This appeal seeks the review and reversal of the decision promulgated on May 27, 2014,¹ whereby the Court of Appeals (CA) affirmed the conviction of accused Alvin Velasco y Huevos and his co-accused Vevir Diaz y Malinao by the Regional Trial Court, Branch 39, in Calapan City, Oriental Mindoro² for the crime illegal sale of prohibited drugs as defined

¹ *Rollo*, pp. 2-18; penned by Associate Justice Normandie B. Pizarro, with the concurrence of Associate Justice Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios.

² *CA rollo*, pp. 83-94, penned by Judge Manuel C. Luna, Jr.

and punished by Section 5 of R.A. No. 9165.

We note that Diaz was also found guilty of illegal possession of dangerous drugs as defined and punished under Section 11 of R.A. No. 9165.

Antecedents

In Criminal Case No. CR-06-8538, only Diaz was charged with the violation of Section 11 of R.A. No. 9165.

In Criminal Case No. CR-06-8539, Velasco and Diaz were jointly charged with the violation of Section 5 of R.A. No. 9165. The relevant information alleged:

That on or about [the] 7th day of August 2006, at around **12:30** in the **afternoon**, more or less, at Barangay **Camilmil**, City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, without any legal authority nor corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, deliver, transport or distribute to a **poseur-buyer, methamphetamine hydrochloride (shabu)**, a dangerous drug, weighing 0.26 gram, more or less.

Contrary to law.³

The Prosecution presented PO2 Rodel Alcano, PO2 Jomer Rodil, PO2 Virgilio Rosales, and P. Sr. Insp. Rhea Dela Cruz-Alviar as its witnesses. On the other hand, the Defense relied on Diaz and Velasco as witnesses.⁴

The CA summarized the respective versions of the parties in the assailed decision as follows:

Evidence for the Prosecution

Sometime in July 2006, a police asset reported to PO2 Alcano that the Accused-Appellants were selling shabu in Calapan City. The Calapan City Police Station verified this information through a surveillance operation that lasted for at least two (2) weeks.

On August 7, 2006, a buy-bust operation was planned and led by Senior Police Officer II Eduardo Espiritu (SPO2 Espiritu). PO2 Alcano was designated as the poseur-buyer with Police Officer III Avelino

³ Id. at 128.

⁴ *Rollo*, p. 4.

Masongson, PO2 Rodil, and PO2 Rosales as arresting officers. Three (3) Five Hundred-Peso (PhP500.00)-bills were prepared as marked money. The initials "RUA", corresponding to PO2 Alcano's initials, were written thereon and the bills' serial numbers were recorded in the police blotter.

x x x x

After the preparation was completed, the police asset contacted the Accused-Appellants and arranged a sale of shabu near a Petron gasoline station in Barangay Camilmil.

PO2 Alcano and the police asset proceeded to the above meeting place on board a motorcycle and the other police officers followed discreetly in an unmarked Toyota Revo. PO2 Alcano parked the motorcycle beside the air and water section and the other members of the buy-bust team remained inside the Revo and parked the same beside a gas pump of Petron. The Accused-Appellants arrived there ahead of them. PO2 Alcano and the police asset approached Accused-Appellants and handed the marked money to Velasco, who accepted the same. Velasco then took out a small plastic sachet containing a white crystalline substance suspected to be shabu and gave it to PO2 Alcano. On the other hand, Diaz watched the entire exchange and attempted to sell more shabu saying, "*If you still need more, we still have some.*"

After seeing the sale, the other members of the buy-bust team quickly alighted from the vehicle and apprehended the Accused-Appellants. They were searched for more illegal drugs and found three (3) small plastic sachets on Diaz containing white crystalline substance suspected to be shabu. The marked money were found inside Velasco's wallet.

The Accused-Appellants, together with the seized items, were brought to the Calapan City Police Station and were photographed in the presence of Barangay Captain Frayre. The small plastic sachet confiscated from Velasco containing a substance suspected to be shabu was marked with PO2 Alcano's initials "RUA". On the other hand, the three (3) small plastic sachets found on Diaz were marked as "JVR-1", "JVR-2", and "JVR-3". PO2 Alcano prepared the Inventory of Confiscated Items and the same was attested to by Barangay Captain Freyre. The requests for laboratory examination were prepared by Police Superintendent Policarpio Lopez. Thereafter, the plastic sachets recovered from the Accused-Appellants were personally turned over by PO2 Alcano and PO2 Rodil to PSI Alviar, the forensic chemist of the Crime Laboratory Service of Calapan City, on the same day of arrest.

PSI Alviar received the four (4) heat-sealed transparent plastic sachets with the above markings. Qualitative, chemical, and confirmatory examinations were conducted thereon and the results yielded positive for *Methamphetamine Hydrochloride* or more commonly known as shabu.

PO2 Rosales, as arresting officer, corroborated the testimonies of PO2 Alcano and PO2 Rodil on its material points.⁵

⁵ Id. at 4-7.

Evidence for the Defense

Diaz testified that on August 7, 2006 at around 3:00 a.m., he left their house in Fairview, Quezon City, and went to Calapan City, Oriental Mindoro, to participate in cockfights and billiard games. xxx

Diaz then went to the house of his friend Manding Mercado (Manding) in Lumangbayan, Calapan City. It turned out that Manding was in Puerto Galera that time, so Diaz decided to follow him there. Before going to Puerto Galera, he took his lunch at a *kambingan* near Petron gasoline station in Camilmil, Calapan City.

After eating, two (2) persons arrived and asked Diaz, “*May dala kang baril?*” He raised his hands and after which, he was led to a Toyota Revo. He saw Velasco already inside the said vehicle.

For his part, Velasco testified that on August 7, 2006 at around 12:00 noon, he was at the national highway across the MOTO terminal in Barangay Lalud. When he was about to cross the road, a white Toyota Revo suddenly stopped in front of him and several armed men in civilian clothes alighted, three (3) of whom pointed their guns at him. One of the armed men, later identified as PO2 Rosales, told him that concerned citizens informed them that he was carrying a firearm. He was bodily searched but none was found. Velasco was, nonetheless, handcuffed and was directed to board the vehicle. They drove to Barangay Camilmil and stopped in front of a *kambingan* for a period of around five (5) minutes, then Diaz was later brought inside the vehicle. Diaz knew who Velasco was because they were introduced to each other by a *kumpare* about a year prior to the incident.

The Accused-Appellants were brought to the Calapan City Police Station where they were frisked and stripped naked but no firearm or illegal drugs were found in their possession. They were investigated without the assistance of a counsel. They were maltreated and one of the policemen even took Velasco’s money amounting to Twenty Thousand Pesos (PhP20,000.00). The Accused-Appellants were brought to the Prosecutors’ Office the next day for inquest proceedings where they revealed that one of the arresting officers demanded One Hundred Thousand Pesos (PhP100,000.00) in exchange for Velasco’s release. When Velasco told the arresting officer that he does not have money, he heard them saying, “*Accomplishment na lang natin ‘to.*”⁶

Ruling of the RTC

On April 10, 2012, the RTC rendered its joint decision after trial, and convicted Velasco and Diaz as charged,⁷ disposing:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

⁶ Id. at 7-8.

⁷ CA *rollo*, pp. 83-94.

1. In CR-06-8538, this Court finds the accused VEVIR DIAZ y MANALO **GUILTY** beyond reasonable doubt as principal of the crime charged in the aforequoted information and in default of any modifying circumstances attendant, hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to FIFTEEN (15) YEARS and ONE (1) DAY as MAXIMUM and to pay a fine in the amount of ₱300,000.00, with the accessory penalties provided by law and with credit for preventive imprisonment undergone, if any. The 0.90 grams of *methamphetamine hydrochloride* (shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.
2. In CR-06-8539, this Court finds accused VEVIR DIAZ y MANALO and ALVIN VELASCO y HUEVOS **GUILTY** beyond reasonable doubt as principals of the crime charged in the aforequoted Information and in default of any modifying circumstances attendant, hereby sentences them to suffer the penalty of **LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS**, with the accessory penalties provided by law and with credit of preventive imprisonment undergone, if any. The 0.26 grams of *methampethamine hydrochloride* (shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.

SO ORDERED.⁸

The RTC observed that the elements of illegal possession of dangerous drugs charged against Diaz in Criminal Case No. CR-06-8538 and of illegal sale of dangerous charged against Diaz and Velasco in Criminal Case No. 06-8539 were established during the trial; that the accused were caught *in flagrante delicto* selling *shabu* during the valid buy-bust operation, thereby rendering the evidence presented against them admissible; that the apprehending police officers properly preserved the integrity and evidentiary value of the seized items by substantially complying with the requirements of Section 21 of R.A. No. 9165; and that their defenses of denial and frame-up did not prevail over the positive testimonies of the Prosecution's witnesses.⁹

Judgment of the CA

On appeal, the CA affirmed the convictions of Velasco and Diaz, upholding the RTC's findings that the Prosecution established all the elements of the offenses charged; that the testimonies of the Prosecution's witnesses should be given full faith and credence, and should thus be

⁸ Id. at 93-94.

⁹ Id. at 93.

presumed to have performed their official duties in a regular manner; and that the chain of custody of the seized drugs had remained intact, thereby preserving the integrity, identity and value of the drugs as evidence.

Issue

With Diaz having meanwhile expressly informed the Court that he was no longer appealing his convictions, only Velasco's appeal remains to be resolved.¹⁰ The sole issue is whether or not the CA erred in finding Velasco guilty beyond reasonable doubt of the crime charged in Criminal Case No. CR-06-8539.

Ruling of the Court

The appeal has merit.

To establish the crime of illegal sale of dangerous drugs, the following elements must concur: (a) the identity of the buyer and the seller, object and the consideration of the sale; and (b) the delivery of the thing sold and the payment for it.¹¹ The Prosecution must prove that the transaction or sale of dangerous drugs actually took place, coupled with the presentation in court of evidence of the thing sold, which is the *corpus delicti*.¹² The Prosecution must then establish with the same exacting degree of certitude as that required for sustaining a conviction that the substance illegally sold was the very substance adduced in court.¹³ In that regard, the requirement for ensuring the chain of custody becomes essential as it ensures that unnecessary doubts respecting the identity of the evidence are thereby minimized if not altogether removed.¹⁴

Section 21, paragraph 1, of R.A. No. 9165 and Section 21 (a), Article II of its Implementing Rules and Regulations (IRR) are relevant.

Section 21, paragraph 1, of R.A. No. 9165 reads:

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,

¹⁰ *Rollo*, p. 19.

¹¹ *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 697.

¹² *Cruz v. People*, G.R. No. 164580, February 6, 2009, 578 SCRA 147, 154.

¹³ *People v. Adrid*, *supra*, note 11.

¹⁴ *Id.*

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;

xxx xxx xxx

Section 21 (a), Article II of the IRR of R.A. No. 9165 states:

xxx xxx xxx

(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 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;

xxx xxx xxx

The procedures outlined under the foregoing provisions were undeniably not followed by the members of the apprehending team. They did not mark and photograph the seized drugs, or make an inventory of the seized drugs immediately upon confiscation at the place of the buy-bust operation and in the presence of Velasco, a representative from the media and the Department of Justice, and an elected public official who should then have signed the copies of the inventory and be given a copy thereof.

Although the last paragraph of Section 21(a) of the IRR has set a saving mechanism such that the non-compliance with the required procedures would not automatically invalidate the seizure and custody of the dangerous drugs recovered or seized, the applicability of the saving mechanism is conditioned upon the rendering by the apprehending team of a

justification for such non-compliance. Otherwise, the failure to render the justification will create doubt as to the identity and the evidentiary value of the drugs presented as evidence in court.

It is notable that the apprehending officers who had initial custody of the drugs did not reveal why the requisite inventory, marking and photographing were done only after transporting of the seized dangerous drugs from the point of the confiscation of the drugs to the Calapan Police Station, and why the same were done in the presence only of the barangay chairman. The failure to justify on the part of the arresting team could only mean that the important links in the chain of custody were absent, and this constituted a fatal flaw in the incrimination of Velasco. Indeed, the apprehending officers had to explain during the trial the failure to justify. At the minimum, such justification would bring the arrest of Velasco back on the road of regularity.

The last paragraph of Section 21(a) of the IRR provides a saving mechanism to ensure that not every case of non-compliance irreversibly prejudices the State's evidence. It is significant to note, however, that the application of the saving mechanism to any particular situation is expressly conditioned upon the State rendering a fitting or suitable explanation of the lapse or gap in the compliance with the procedures.¹⁵ The explanation should at least disclose to the trial court the reason or reasons for the lapse or gap in compliance with the procedure considering that every step in the procedure is an essential link in the chain of custody.

It is noteworthy, too, that the police officers had sufficient time to ensure the presence of the representative of the media and the DOJ at the seizure and confiscation of the illegal drugs in light of their assertion that they had conducted a surveillance operation at least two weeks following the report of the police asset in July 2006. Nevertheless, they still failed to faithfully comply with the procedural safeguards, and, worse, they did not offer any explanation for their non-compliance.

The regularity of the performance of official duty on the part of the arresting officers during the buy-bust operation and its aftermath cannot be presumed when the records do not contain any explanation why the various requirements of Section 21 of R.A. No. 9165 were not complied with. Hence, the incrimination of the accused was doubtful, and his acquittal of the charge of illegal selling of dangerous drugs on the ground of reasonable doubt should follow.

In every prosecution for the sale of dangerous drugs prohibited under R.A. No. 9165, the State, not the accused, carried the heavy burden of

¹⁵ *People v. Sanchez*, G. R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

justifying at the trial the lapses or gaps in the chain of custody. Without the justification, the chain of custody is not shown to be unbroken; hence, the integrity of the evidence of the *corpus delicti* was not preserved. The result is that a doubt about whether the evidence presented to the trial court was the substance that was the subject of the illegal sale arose. The accused could not be justifiably found and held guilty of the offense charged in the face of such doubt. The acquittal of the accused should follow.¹⁶


WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 27, 2014 in CA-G.R. CR-HC No. 05655; **ACQUITS** accused **ALVIN VELASCO y HUEVOS** on the ground that his guilt was not established beyond reasonable doubt; and **ORDERS** his immediate release from confinement at the New Bilibid Prison in Muntinlupa City unless there are other lawful causes warranting his continuing confinement.


The Court **DIRECTS** the Director of the Bureau of Corrections to implement the immediate release of **ALVIN VELASCO y HUEVOS**, and to report on his compliance within 10 days from receipt.


SO ORDERED.

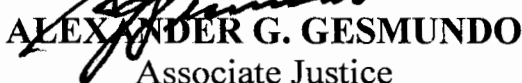

LUCAS P. BERSAMIN
Associate Justice

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

¹⁶ *People v. Geronimo*, G.R. No. 180447, August 23, 2017.

ATTESTATION

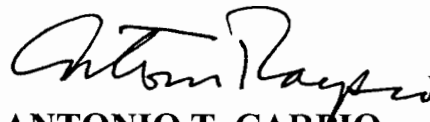
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



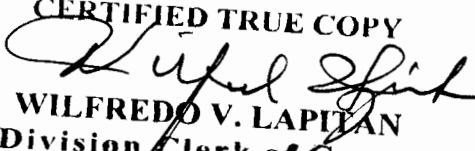
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAR 23 2018