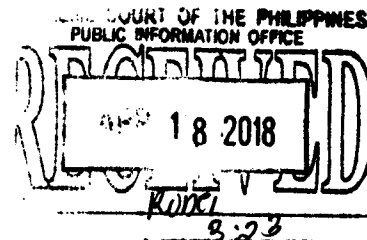




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 220451

Present:

- versus -

SERENO, *C.J., Chairperson,*
 LEONARDO-DE CASTRO,
 BERSAMIN,*
 DEL CASTILLO, *and*
 TIJAM,** *JJ.*

ALLAN BUGTONG y AMOROSO,
Accused-Appellant.

Promulgated:
FEB 26 2018

X-----

DECISION

DEL CASTILLO, J.:

On appeal is the December 22, 2014 Decision¹ of the Court of Appeals (CA) in CA-GR. CEB-CR-HC No. 01461, which affirmed the March 21, 2012 Decision² of the Regional Trial Court of Roxas City, Branch 16 (RTC) finding accused-appellant Allan Bugtong y Amoroso (accused-appellant) guilty beyond reasonable doubt of the illegal sale of dangerous drugs, as defined under Section 5, Article II of Republic Act No. 9165 (RA 9165).³

Factual Antecedents

Accused-appellant was charged with the illegal sale of dangerous drugs in an Information⁴ dated January 21, 2009, reading as follows:

That on or about the 10th day of January 2009, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to SPO1 MA. NANETTE PUASAN (a PNP 'poseur

* Designated as additional member per October 18, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

** On official leave.

¹ CA *rollo*, pp. 100-109; penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhoseph Y. Lopez.

² Records, pp. 378-389; penned by Judge Delano F. Villarruz.

³ COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

⁴ Records, pp. 1-2.

buyer'), one (1) small sachet of suspected Methamphetamine Hydrochloride or 'shabu' weighing 0.03 [gram], a dangerous drug, without the authority to sell and distribute the same.

CONTRARY TO LAW.⁵

Accused-appellant pleaded "Not Guilty"⁶ to the charge against him.

Trial on the merits thereafter ensued.

Version of the Prosecution

SPO1 Ma. Nanette Puasan (SPO1 Puasan) twice conducted surveillance against accused-appellant at his house located at Legaspi,⁷ Ilaya, Roxas City⁸ during which she saw accused-appellant give something to someone, who gave him something in return.⁹ PO2 Rodel Ibañez (PO2 Ibañez) also conducted a surveillance on accused-appellant.¹⁰

Thus, on January 10, 2009, at about 10:30 a.m., Chief of Police Leo Batiles formed a team of police officers to conduct a buy-bust operation on accused-appellant, and which team was composed of SPO4 Efren Clavaton, PO3 Antonio Buenvenida, PO3 Jose Dexter Paulin (PO3 Paulin), PO2 Samuel Deliña (PO2 Deliña), PO2 Ibañez, and SPO1 Puasan,¹¹ who was designated as the poseur-buyer. The marked money was recorded in the police blotter, which was signed by PO2 Lenie de los Santos.¹²

At about 5:30 p.m. of the same day, the buy-bust team proceeded to the target area. SPO1 Puasan and the police asset waited in front of the Banica Elementary School while the rest of the buy-bust team positioned themselves nearby. When accused-appellant arrived in front of the school, the police asset introduced SPO1 Puasan to him as a buyer of *shabu*. SPO1 Puasan gave accused-appellant one ₱100.00 bill, and one ₱200.00 bill. In turn, accused-appellant gave SPO1 Puasan a sachet of *shabu*. After checking the item, SPO1 Puasan raised her hand, the team's pre-assigned signal that she already bought *shabu*. PO2 Ibañez then approached accused-appellant and recovered from him the marked money. Thereafter, PO2 Ibañez arrested accused-appellant,¹³ and turned over the marked

⁵ Id. at 1.

⁶ Id. at 30.

⁷ TSN, March 9, 2010, pp. 5-6.

⁸ TSN, October 26, 2010, p. 2.

⁹ TSN, March 9, 2010, p. 6.

¹⁰ TSN, June 29, 2010, p. 6.

¹¹ Id. at 5, 7.

¹² TSN, March 9, 2010, pp. 9, 13.

¹³ Id. at 10-15.

money to SPO1 Puasan.¹⁴ SPO1 Puasan immediately placed the marking “AB” on the item sold to her by accused-appellant. She also promptly made an inventory of said item and marked money recovered from accused-appellant.¹⁵ The buy-bust team then brought accused-appellant to the police station. SPO1 Puasan kept the confiscated item inside a locker accessible only to her.

The following day, January 11, 2009, SPO1 Puasan personally brought the seized item, together with the Request for its examination, to the PNP¹⁶ Crime Laboratory at Camp Delgado, Iloilo City¹⁷ and turned over the same to a certain PO1 Cachila. After recording them in the logbook, PO1 Cachila turned over the Request and the specimen consisting of one small transparent plastic sachet suspected to contain *shabu* to Police Superintendent Angela L. Baldevieso (P/Supt. Baldevieso), then Forensic Chemist of the Crime Laboratory.¹⁸

SPO1 Puasan identified in court the marked money and the sachet of *shabu* she bought from accused-appellant. She stressed that said sachet was the one she bought from accused-appellant as it bore the marking “AB” she placed thereon after the buy-bust.¹⁹

Likewise, P/Supt. Baldevieso presented in court the specimen and confirmed that it gave a positive result for methamphetamine hydrochloride or *shabu*. She stated that the specimen presented in court was the same one she received on January 11, 2009 as evidenced by the markings she placed on the plastic containing the specimen. These markings were the control number, D-011-09; the weight of the specimen, 0.03 gram; and her initials “AB”.²⁰

Version of the Defense

Accused-appellant averred that, prior to his detention, he worked as a singer/entertainer in restaurants, bars, and discos. On January 10, 2009, at around 5:30 p.m., while walking towards Banica Elementary School to fetch his son, a familiar motorcycle often ridden by one PO Tony Besana suddenly stopped by his side. PO3 Paulin alighted from it, and held his (accused-appellant’s) neck. PO2 Ibañez, who was with PO3 Paulin, then poked accused-appellant with a firearm, and searched his body and pockets. Afterwards, PO2 Ibañez and PO3 Paulin pushed him inside the sidecar of the motorcycle.²¹



¹⁴ TSN, June 29, 2010, p. 13.

¹⁵ TSN, March 9, 2010, pp. 14-16.

¹⁶ Philippine National Police.

¹⁷ TSN, March 9, 2010, p. 18.

¹⁸ TSN, August 20, 2009, pp. 4, 6-7.

¹⁹ TSN, March 9, 2010, p. 14.

²⁰ TSN, August 20, 2009, pp. 8-9.

²¹ TSN, October 26, 2010, pp. 5-8.

PO2 Ibañez and PO3 Paulin brought accused-appellant to the police station where he was interrogated by PO2 Delaña, PO2 Ibañez, and PO3 Paulin. PO3 Paulin then took some objects from his drawer, placed them on the desk, and asked accused-appellant to identify which one belonged to him. In reply, accused-appellant told the police officers that what they were doing was wrong and that he could get back at them. Consequently, PO3 Paulin slapped accused-appellant. The police officers thereafter imprisoned him.²²

Ruling of the Regional Trial Court

The RTC found accused-appellant guilty as charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The RTC gave credence to SPO1 Puasan and PO2 Ibañez's positive identification of him as the one who sold to SPO1 Puasan a sachet of *shabu*. It also gave weight to the confirmation of P/Supt. Baldevieso that the item seized from accused-appellant contained *shabu*. It added that the marked money recorded in the morning of January 10, 2009 at the Desk Office Report was recovered by PO2 Ibañez from accused-appellant after the buy-bust.

Moreover, the RTC held that the presumption that the police officers were regularly performing their duties must prevail as there was no showing that they had any ill motive to testify against accused-appellant.

On appeal, accused-appellant argued that the prosecution failed to establish the unbroken chain custody of the seized item. Thus, he posited that the RTC erred in finding him guilty of illegal sale of dangerous drugs.

Ruling of the Court of Appeals

The CA affirmed the RTC ruling. It held that there was no gap or break in the chain of custody of the seized item in this case.

According to the CA, SPO1 Puasan had initial custody of the subject drug when she, as poseur buyer, received the sachet of *shabu* from accused-appellant; immediately after the arrest of accused-appellant, SPO1 Puasan marked and made an inventory receipt of said item at the crime scene, in the presence of accused-appellant; and, thereafter, she brought the seized *shabu* at the police station, together with accused-appellant, for proper documentation.

The CA also noted that at the police station, a request for examination was made; SPO1 Puasan placed the sachet of *shabu* inside her locker, which was

²² Id. at 8-11.



accessible only to her; the following day, she personally delivered the confiscated item and the request for examination to the Crime Laboratory which were duly received by PO1 Cachila, who turned them over to P/Supt. Baldevieso; in turn, P/Supt. Baldevieso placed a masking tape on the sachet and marked it with “D-011-09” as its control number; and, “0.03 gram” corresponding to the weight of the confiscated item, and her initials “AB.” The CA stressed that P/Supt. Baldevieso identified in court said item that was found positive for *shabu*.

Based on the foregoing, the CA decreed that the integrity and evidentiary value of the confiscated *shabu* were preserved.

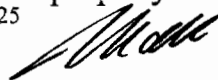
Our Ruling

The appeal has merit.

As a rule, the trial court’s assessment on the credibility of the witness, when so affirmed by the CA, is binding and conclusive upon the Court. However, this rule allows certain exceptions such as when the trial court had overlooked or misconstrued material circumstances, which if properly considered would change the outcome of the case.²³ Here, the Court finds that the RTC and the CA misapprehended relevant facts. As such, said exception applies warranting the dismissal of the charge against accused-appellant.

For a charge of illegal sale of dangerous drugs to prosper, the prosecution must prove: (1) the identity of the buyer, and seller, of the subject drug; (2) the object and the consideration of the sale; and, (3) the delivery of the sold item, and its payment. Further, it is crucial that the integrity of the seized drug be preserved; in this regard, the prosecution must prove an unbroken chain of custody over the subject illegal drug. This means that every link in the chain of its custody, from the time of its confiscation until its presentation in court, must be established.²⁴

In this case, records reveal that during the buy-bust, SPO1 Puasan acted as poseur-buyer and bought an item, suspected as *shabu*, from accused-appellant. SPO1 Puasan also identified in court accused-appellant as the person subject of the buy-bust, and the one who accepted the marked money and sold to her a sachet of suspected *shabu*. However, accused-appellant contests the very item seized from him. He argues that the same was not properly marked immediately upon seizure by SPO1 Puasan, the poseur-buyer.²⁵



²³ *People v. Lumudag*, G.R. No. 201478, August 23, 2017.

²⁴ *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

²⁵ CA rollo, p. 34.

Stated differently, accused-appellant argues that there was a gap in the chain of custody of the seized item through the failure to properly mark it immediately after confiscation in violation of Section 21, RA 9165.

The Court agrees.

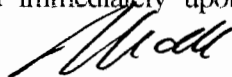
Section 21, Article II of RA 9165, as amended by RA 10640,²⁶ pertinently provides:

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, x x x 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, x x x 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 persons 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.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, x x x the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results x x x shall be issued immediately upon the receipt of the subject item/s; *Provided*, That when the volume of dangerous drugs, x x x does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory; *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification;



²⁶ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved July 15, 2014.

As a general rule, there are four links in the chain of custody of the recovered item: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) its turnover by the apprehending officer to the investigating officer; (3) the investigating officer's turnover thereof to the forensic chemist for examination; and, (4) its submission by the forensic chemist to the court.²⁷

As starting point of the chain of custody, the immediate marking of the specimen is necessary because it serves as reference for and by the subsequent handlers of the item. Marking is also used to distinguish the subject item from any similar or related evidence from their seizure until their disposal after the proceedings. More particularly, marking refers to the placement by the apprehending officer or the poseur-buyer of one's initials or signature or any identifying signs on the specimen. It must be done in the presence of the apprehended violator of law, and immediately upon his or her apprehension.²⁸

Here, the supposed marking on the seized item may have been deemed as its identifying sign had it not been that SPO1 Puasan and P/Supt. Baldevieso both testified having made the same marking on the specimen.

To recall, SPO1 Puasan claimed that after the buy-bust, she immediately marked the seized item by placing "AB" thereon, viz.:

Q I am showing to you this one (1) sachet previously marked as Exhibit "C", can you tell us [the] relation of that sachet to your testimony?

A This [was] the one that I bought from the accused.

Q How do you know that this is the very same [item] that you xxx purchased from him?

A Because I made the marking.

Q What mark did you place?

A I made a marking AB.

Q When did you place the marking?

A On that particular date and time when the buy-bust operation happened.

Q In what place?

A In front of the school were the buy-bust operation happened.²⁹



²⁷ *People v. Del Mundo*, G.R. No. 208095, September 20, 2017.

²⁸ *People v. Ismael*, G.R. No. 208093, February 20, 2017.

²⁹ TSN, March 9, 2010, pp. 14-15.

Similarly, P/Supt. Baldevieso herself attested that she placed the marking “AB” on the item submitted to the Crime Laboratory, in addition to “D-011-09” pertaining to its control number, and “0.03 gram” corresponding to its weight, viz.:

Q And why do you know that this is the very same sachet that you have received and the contents of which you examined in connection with this case against accused?

A I have my markings on the masking tape which I provided and said markings were D-011-09, the control number and the 0.03 gram, the weight of the methamphetamine hydrochloride with my initials AB were already there in this Exhibit.

Q Now, this small plastic sachet, was this placed in any container when you received the same?

A It was placed on the staple sealed transparent plastic bag with markings.

Q Showing to you this big plastic with markings on it, is that the same plastic where this Exhibit ‘C’ was placed when you received the same?

A Yes, Ma’am.

Q And did you place any marking on this plastic bag containing Exhibit ‘C’?

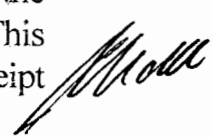
A Yes ma’am, I have my markings D-011-09 our control with my initials.³⁰

Thus, both SPO1 Pusan and P/Supt. Baldevieso claimed to have placed the markings “AB” on the sachet. Notably, the records did not indicate that there were two “AB” markings on the specimen. Based on the surrounding circumstances, the Court finds it more plausible and logical to conclude that it was P/Supt. Baldevieso who placed the “AB” marking considering that “AB” were her initials. Besides, it would be rather odd for P/Supt. Baldevieso to use a mark similar to the one that was already previously placed in the seized item. The purpose of placing a mark was precisely to distinguish it from similar items and to indicate that said item had been under her temporary custody. On such premise, the assertion of SPO1 Pusan that she marked the seized item with “AB” immediately after confiscation is without merit. In fine, the evidence tends to show that SPO1 Pusan did not mark the seized sachet at the outset. Evidently, such failure to immediately mark the specimen constitutes a missing link in the chain of custody. With such missing link, there was no assurance that the item subsequently turned over to the Crime Laboratory, and eventually presented in court, was the same one recovered from the accused-appellant.

Moreover, in *People v. Hementiza*,³¹ the Court stressed that, to establish the chain of custody, testimony about every link in the chain must be made. This means that every person who touched the item must describe his or her receipt

³⁰ TSN, August 20, 2009, pp. 8-9.

³¹ G.R. No. 227398, March 22, 2017.



thereof, what transpired while the same was in one's possession, and its condition when delivered to the next link. This requirement was, however, not complied with here.

P/Supt. Baldevieso testified that a certain PO1 Cachila received the seized item and the request for its laboratory examination; that PO1 Cachila likewise recorded such receipt in the Crime Laboratory's logbook; and that PO1 Cachila turned over the specimen to him (P/Supt. Baldevieso). Unfortunately, PO1 Cachila did not testify in court to confirm the receipt and turn over of the seized item thus creating another gap in the chain of custody. Consequently, it cannot be determined with certainty whether the item supposedly turned over by PO1 Cachila to P/Supt Baldevieso was the same item received by PO1 Cachila from SPO1 Pusan.

Likewise, the prosecution failed to show that the buy-bust team physically inventoried and photographed the seized item in the presence of the witnesses required under Section 21, RA 9165. While such requirement, under justifiable reasons, shall not render void the seizure of the subject item, the prosecution must nonetheless explain its failure to abide by such procedural requirement, and show that the integrity and evidentiary value of the seized item was preserved. Here, no such explanation was offered by the prosecution for its non-compliance with Section 21 of RA 9165.

"It is a matter of judicial notice that buy-bust operations are 'susceptible to police abuse, the most notorious of which is its use as a tool for extortion.'"³² Such being the case, procedural safeguards, including those specified under Section 21, RA 9165, are provided in order to protect the innocent from abuse, and to ensure the preservation of the integrity of the evidence.³³

Considering all the foregoing lapses and gaps in the chain of custody of the seized specimen, the possibility that the integrity and evidentiary value of the recovered item had been compromised is not remote. Hence, accused-appellant's guilt for illegal sale of dangerous drugs has not been proved beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The December 22, 2014 Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 01461 is **REVERSED and SET ASIDE**. Accused-appellant Allan Bugtong y Amoroso is **ACQUITTED**. He is **ORDERED** released from detention unless other valid ground exists for his further imprisonment. The Director of the Bureau of Corrections is **DIRECTED** to report his compliance herewith within five (5) days from receipt.

³² *People v. Barte*, G.R. No. 179749, March 1, 2017.


³³ *Id.*

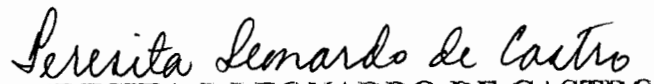


SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice

(On official leave)
NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


MARIA LOURDES P. A. SERENO
Chief Justice