



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECEIVED
 DEC 13 2018
 BY: LCH
 TIME: 8:55

FIRST DIVISION

PEOPLE OF THE PHILIPPINES
 Plaintiff-Appellee,

G.R. No. 206398

Present:

BERSAMIN, J.*
Acting Chairperson,
 DEL CASTILLO,**
 TIJAM,
 GISMUNDO,*** and
 HERNANDO, JJ.****

- versus -

Promulgated:

JERRY JAMILA Y VIRAY,
 Accused-Appellant

NOV 05 2018

X-----X

DECISION

TIJAM, J.:

Before the Court is an appeal of the Court of Appeals' (CA) Decision¹ dated July 12, 2012 dismissing the accused-appellant's appeal and affirming the Decision² dated May 25, 2011 of the Regional Trial Court (RTC), Branch 204, Muntinlupa City in Criminal Case No. 08-762 convicting accused-appellant of Violation of Section 5, Article II, Republic Act (R.A.) No. 9165.

* Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

** On official leave.

*** Designated Additional Member per Special Order No. 2607 dated October 10, 2018; on official leave.

**** Designated Additional Member per Special Order No. 2607-B dated October 24, 2018 vice Associate Justice Francis H. Jardeleza.

¹ Penned by Associate Justice Amy C. Lazaro-Javier with the concurrence of Associate Justices Mariflor P. Punzalan-Castillo and Socorro B. Inting; *rollo*, pp. 2-13.

² Penned by Presiding Judge Juanita T. Guerrero; *CA rollo*, pp. 33-38.

FACTS OF THE CASE

Acting on an information received by the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) of Muntinlupa City, a surveillance and monitoring operation was conducted against a certain “Jerry”, who allegedly was selling *shabu* at Purok 4 PNR Site, Barangay Alabang, Muntinlupa City (target place).³

Upon validation of the information, P/S Inspector Alfredo Valdez conducted a briefing and designated SPO4 Faustino Atienza as team leader, PO3 Norman Villareal (PO3 Villareal) as *poseur* buyer, and PO1 Salvador Genova as immediate backup. Accordingly, a Pre-Operation Report to the Philippine Drug Enforcement Agency (PDEA) and the buy-bust money were prepared.⁴

On September 30, 2008, at about 9:30 p.m., the team went to the target place. PO3 Villareal and the informant approached “Jerry”, who was then having a drinking session with two other persons. The informant introduced PO3 Villareal to “Jerry” as a taxi driver interested to buy *shabu*. When asked how much he wanted, PO3 Villareal answered ₱300.00 worth. “Jerry” said that he has ₱500.00 worth of *shabu*, but he is willing to sell it only for ₱300.00. Thus, PO3 Villareal gave “Jerry” the marked peso bills and the latter, in turn, took from his pocket a plastic sachet containing white crystalline substance and gave it to PO3 Villareal.⁵

Upon examination of the plastic sachet, PO3 Villareal made the pre-arranged signal to alert his backup team. Immediately, he handcuffed “Jerry” and informed him of his constitutional rights. Thereafter, “Jerry” was brought to the SAID-SOTF office where he was identified as Jeremy Jamila (accused-appellant).⁶

At the station, PO3 Villareal marked the confiscated plastic sachet with the initial “JJ”. He also prepared an Inventory, Booking and Information Sheet, Sport Report, Request for Laboratory Examination, Request for Drug Test, photocopied the buy bust-money, and took pictures of accused-appellant, as well as the confiscated items.⁷

After the laboratory examinations, the specimen yielded positive for *methylamphetamine hydrochloride*, a regulated drug.⁸

³ *Rollo*, p. 4.

⁴ *Id.* at 4-5.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ *Id.* at 5-6.

⁸ *Id.* at 6.

Thus, an Information⁹ was filed against the accused-appellant for violation of Section 5, Article II of R.A. No. 9165, to wit:

On or about the 30th day of September 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully and unlawfully sell, trade and dispense a dangerous drug, as he did then and there sell to PO3 Norman Villareal for Three Hundred Pesos (P300.00) Methylamphetamine Hydrochloride, a dangerous drug, with a total weight of 0.03 gram contained in transparent plastic sachet, without proper authorization or license therefor.

Contrary to law.

For his defense, accused-appellant countered that while he was drinking beer in front of a store, four men suddenly approached and handcuffed him. He was allegedly brought inside a Revo vehicle, and was asked "San daw po meron?." When accused-appellant replied that he did not know, he saw PO2 Dionisio Gastanes, Jr. produced a plastic sachet containing *shabu*, and three marked P100 bills and told him that those were the evidence that will be used against him. Despite his denial, accused-appellant was apprehended by the police officers.¹⁰

RTC RULING

On May 25, 2011, the trial court rendered its Decision finding accused-appellant guilty of the crime charged, and sentenced him as follows:

WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of illegally selling "shabu" a dangerous drug in violation of Sec. 5, Art. II of R.a.. (sic) 9165, JERRY JAMILA y VIRAY is sentenced to LIFE IMPRISONMENT and to pay a fine of Php 500,000.00.

The subject drug evidence is ordered transmitted to the Philippine Drug Enforcement Agency for proper disposition.

The preventive imprisonment undergone by the accused shall be credited in his favor.

SO ORDERED.¹¹

In convicting accused-appellant, the trial court held that the testimonies of the police officers were more credible and consistent with the documentary evidence they presented. Also, it found that the prosecution has indubitably and sufficiently proven all the elements of the crime charged.

⁹ CA rollo, p. 11.

¹⁰ Rollo, pp. 6-7.

¹¹ CA rollo, p. 69.

CA RULING

In a Decision dated July 12, 2012, the CA affirmed the Decision of the RTC *in toto*, thus:

ACCORDINGLY, the appeal is DISMISSED and the assailed Decision dated May 25, 2011, AFFIRMED.

SO ORDERED.¹²

The CA held that the prosecution had amply proved that the apprehending team substantially complied with the law and preserved the integrity of the seized items. Also, it gave credence to the testimonies of the buy-bust team members who were presumed to have regularly performed their duties.

Hence, the present appeal.

The accused-appellant raised the following errors in his appeal:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE ALLEGEDLY SEIZED DRUG.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY OF THE SEIZED ITEM.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PREVAILING IRREGULARITIES IN THE APPREHENDING OFFICERS' PERFORMANCE OF THEIR OFFICIAL DUTIES AND THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹³

¹² *Rollo*, p. 13.

¹³ *CA rollo*, p. 49.

The accused-appellant averred that the irregularities on the part of the apprehending team, and the uncertainties surrounding the present case, reasonable doubt clearly exist as regards his guilt.

RULING OF THE COURT

The petition has merit.

Under Section 5, Article II of R.A. 9165, to secure a conviction for illegal sale of *shabu*, the following must concur: (i) the identity of the buyer and the seller, the object of the sale and its consideration; and (ii) the delivery of the thing sold and the payment therefore. It is necessary that the sale transaction actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.¹⁴

Jurisprudence dictates that the identity of the prohibited drug must be established beyond reasonable doubt, since it is an integral key part of the *corpus delicti* of the crime. Thus, the prosecution must prove with certitude each link in the chain of custody over the dangerous drug. The dangerous drug recovered from the suspect must be the very same object presented before the court as exhibit.¹⁵

To prevent abuse during buy-bust operations, however, the Congress prescribed several procedural safeguards under R.A. 9165 to guide the law enforcers implementing the same.¹⁶ Specifically, Section 21 of R.A. 9165, as amended, relating to the custody and disposition of the confiscated drugs 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 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

¹⁴ *People of the Philippines v. Angelita Reyes y Ginove and Josephine Santa Maria y Sanchez*, G.R. No. 219953, April 23, 2018.

¹⁵ *People v. Viterbo, et al.*, 739 Phil. 593 (2014).

¹⁶ *Reyes v. Court of Appeals*, 686 Phil. 137 (2012).

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.

In support of the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations of R.A. 9165 states:

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, 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.

In several cases, however, the Court ruled that failure to comply with the mandated procedural requirements will not invalidate the seizure and custody of the confiscated items in the following instances: (i) there is a justifiable ground for the non-compliance; and (ii) the integrity and evidentiary value of the confiscated items are properly preserved.¹⁷

¹⁷ *People v. Viterbo, et al.*, supra note 15 at 603.

In the present case, a punctilious review of the records shows that the failure of the police officers to comply with the procedural safeguards prescribed by law, left a reasonable doubt in the chain of custody of the confiscated dangerous drug.

First, PO3 Villareal, who testified having inventoried the confiscated drug, did not claim that he conducted the same in the presence of (i) the accused-appellant, or his representative or counsel; (ii) a representative from media and the Department of Justice (DOJ); and (iii) any elected official. During his cross-examination, PO3 Villareal stated that:

[Atty Jaime Felicen] Q: And witnesses during that inventory were certain Raymond Balsomo and Revelino Joaquin, Jr.?

[PO3 Villareal] A: Yes, sir.

Q: To whom you only called them [sic] after you arrived in your office, you called them for purposes of witnessing the inventory?

A: Yes, sir.

Q: In fact, at first they were hesitant to witness because they have nothing to do in your operation?

A: Yes, sir, they just witnessed the inventory.

Q: **And these persons were civilians?**

A: **Local government employees, sir.**

x x x x. (emphasis supplied)¹⁸

As may be gleaned above, there was no representative from the media or the DOJ, and any elected official to witness the inventory of the confiscated item, and no justifiable ground was provided for their absence. Inarguably, the buy-bust operation against accused-appellant was arranged and scheduled prior to its execution. In fact, the buy-bust team even coordinated with the PDEA and prepared the marked money for the operation. Yet, the team failed to secure the presence of these persons required by law to witness the inventory. Surely, as held in *People v. Reyes et al.*,¹⁹ non-compliance to observe the required procedure must be justifiably explained and stated in a sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the confiscated item. Any shortcoming on the part of the prosecution in this regard is fatal to its cause.

Second, PO3 Villareal testified that the marking, inventory, and taking of photograph of the confiscated item were not conducted at the place of the arrest but at the SAID-SOTF, thus:

¹⁸ TSN, February 4, 2010, pp. 19-20.

¹⁹ G.R. No. 219953, April 23, 2018.

[Fiscal Baybay] Q: So when you reached your office what identity you get from the person of the accused?

[PO3 Villareal] A: Jerry Jamila, sir.

x x x x

Q: Now, what did you do with the item that you bought from the accused to your office?

A: We marked the evidence.

Q: Who made the marking?

A: I, sir.

x x x x.²⁰

The CA ruled that R.A. 9165 did not specify the time frame within which “immediate marking” should be done, or where exactly the marking should take place.

The Court finds the explanation of the CA insufficient and unjustifiable considering that in *Candelaria v. People*,²¹ the Court emphasized that immediate marking upon confiscation or recovery of the dangerous drug is indispensable in the preservation of its integrity and evidentiary value.

In the present case, the records undeniably failed to present any credible justification for the buy-bust team’s failure to comply with the safeguards set by law. Absent any justifiable reason, they should have immediately conducted the marking upon seizure and confiscation of the item. The identity of the seized item, not having been sufficiently established beyond reasonable doubt, the acquittal of the accused-appellant should follow.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 12, 2012 of the Court of Appeals in CA-G.R. CR. HC No. 05121 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Jerry Jamila y Viray is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately **RELEASED**, unless he is being lawfully held in custody for any other reason.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he/she has taken.

²⁰ TSN, May 6, 2009, pp. 14-15.

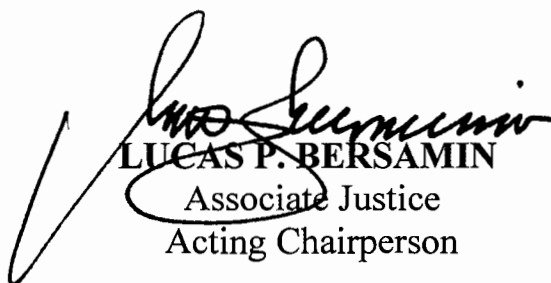
²¹ 725 Phil. 268, 280 (2014).



SO ORDERED.



NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

(on official leave)
MARIANO C. DEL CASTILLO
Associate Justice

(on official leave)
ALEXANDER G. GESMUNDO
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

I attest that the conclusion 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.


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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

Senior Associate Justice

(Per Section 12, R.A. 296,

The Judiciary Act of 1948, as amended)