



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff-Appellee,

G.R. No. 246461

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER,
LOPEZ, JJ.

ROSENDO LEAÑO y LEAÑO,
Accused-Appellant.

Promulgated:

JUL 28 2020

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DECISION

LAZARO-JAVIER, J.:

The Case

This appeal¹ seeks to reverse the Court of Appeals' Decision dated September 14, 2018² in CA-G.R. CR-HC No. 09528 affirming the conviction of appellant Rosendo Leño y Leño for violations of Section 5 and Section 11, Article II of Republic Act No. 9165 (RA 9165) and imposing on him the corresponding penalties.

¹ Notice of Appeal dated October 9, 2018, *rollo*, p. 14.

² *Id.* at 3-13; CA *rollo*, pp. 80-90.

The Proceedings Before the Trial Court

The Charges

Appellant Rosendo Leaño y Leaño was charged in the following Informations:³

Criminal Case No. 16058

The undersigned accuses ROSENDO LEAÑO y LEAÑO @ TOTONG with VIOLATION OF SEC. 5. ART. II OF R.A. 9165, committed as follows:

“That on or about July 01, 2016, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully sell, distribute and give away to another one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride, commonly known as shabu, a dangerous drug, weighing ZERO POINT ZERO SIX TWO EIGHT (0.0628) GRAM, and that the accused was found positive for the use of Methamphetamine, a dangerous drug, after the screening and confirmatory tests on the urine sample taken from him.

“CONTRARY TO LAW.”

Criminal Case No. 16059

The undersigned accuses ROSENDO LEAÑO y LEAÑO @ TOTONG with VIOLATION OF SEC. 11, IN RELATION TO SEC. 25, ARTICLE. II OF R.A. 9165, committed as follows:

“That on or about July 01, 2016, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully have in his possession, custody and control two (2) heat-sealed transparent plastic sachets(,) containing methamphetamine hydrochloride commonly known as ‘shabu’, a dangerous drug, weighing ZERO POINT ZERO NINE FIVE ONE (0.0951) GRAM, and that the accused was found positive for the use of Methamphetamine, a dangerous drug, after the screening and confirmatory tests on the urine sample taken from him.

“CONTRARY TO LAW.”

The cases were raffled off to the Regional Trial Court (RTC) - Branch 92, Balanga City, Bataan. On arraignment, appellant pleaded *not guilty* to both charges.⁴

³ Record (Crim. Case Nos. 16058-59), pp. 1-2.

⁴ *Id.* at 25 & 28.

During the trial, PO1 Paul Nemen M. Pajarin and PO1 Elton P. Berdonar testified for the prosecution while appellant testified for the defense.⁵

The parties stipulated on the expertise and qualifications of forensic chemist PCI Vernon Rey Santiago, PO1 Pajarin's delivery of the specimens to PO2 Dorigo and PCI Santiago of the Bataan Provincial Crime Laboratory, the crime laboratory's receipt of the request for laboratory examination and the specimens to be tested, including the turnover of appellant for drug testing, the existence of Chemistry Report Nos. D-358-16-Bataan and DT-286-16-Bataan, and that the specimens brought for examination were the same ones tested by PCI Santiago.⁶

The Prosecution's Version

PO1 Pajarin testified that on July 1, 2016, around 5:30 in the afternoon, while he was on duty at the Balanga City Police Station, a confidential informant arrived and informed him that a certain "Totong" of Barangay Sibacan was selling illegal drugs. PO1 Pajarin relayed the information to Police Chief Insp. Tampis,⁷ who immediately ordered a buy-bust operation on "Totong."

Upon his instruction, the confidential informant called and informed appellant that he (PO1 Pajarin) wanted to buy P500.00 worth of shabu. They agreed to meet at the Petron gasoline station near the Shell gasoline station in Barangay Poblacion, Balanga City, Bataan.⁸

Thereafter, PCInsp. Tampis designated him as *poseur-buyer*. He was given a Five Hundred Peso (P500.00) bill marked money with serial no. FG366755. He wrote "BCPS" on the marked money. PO2 Abelardo Tacto coordinated with the Philippine Drug Enforcement Agency-Regional Office III (PDEA-Region III) and submitted the Coordination Form⁹ and Pre-Operation Report.¹⁰ Subsequently, PDEA-Region III issued a Certificate of Coordination¹¹ with control no. 10004-072016-0059.¹²

While preparing for the operation, appellant called the confidential informant around 8 o'clock in the evening and informed the latter that he was already on his way to the Petron gasoline station. He (PO1 Pajarin) and the confidential informant left the police station on board a motorcycle while

⁵ TSN dated June 28, 2017, pp. 2-7.

⁶ TSN dated September 15, 2016, pp. 2-5; TSN dated October 6, 2016, pp. 2-7.

⁷ Referred to as PSupt. Joel K. Tampis in separate Sinumpaang Salaysay of PO1 Pajarin and PO1 Berdonar, Record (Crim. Case No. 16058), pp. 95-98.

⁸ TSN dated November 10, 2016, pp. 2-6.

⁹ Exhibit D, Record (Crim. Case No. 16058), p. 100.

¹⁰ Exhibit E, *id.* at 101.

¹¹ Exhibit C, *id.* at 99.

¹² TSN dated November 10, 2016, pp. 4-6; TSN dated March 1, 2017, pp. 3-5.

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PO1 Berdonar and team leader SPO2 Michael S. Yutuc¹³ followed them on board a silver Toyota Innova.¹⁴

A few minutes later, they arrived at the designated meeting place. He (PO1 Pajarin) parked beside the gasoline station while PO1 Berdonar positioned himself around ten (10) meters away and pretended he was waiting for a ride. After a while, the confidential informant saw appellant walking toward them. The confidential informant told him (PO1 Pajarin) that the man approaching them was “Totong.” Appellant instructed him (PO1 Pajarin), “Iabot mo na ang pera, boss” (Hand me the money, boss). He obliged and handed appellant the marked P500.00 bill. In turn, appellant handed him one (1) sachet containing white crystalline substance. He then placed it inside his right pocket. After the exchange, he removed his bull cap to signal PO1 Berdonar that the transaction was already consummated. PO1 Berdonar then rushed to the scene while he introduced himself to appellant as police officer and arrested him. Appellant later identified himself as Rosendo L. Leaño, alias “Totong.”¹⁵

He then frisked appellant and recovered the P500 bill marked money as well as a Marlboro box containing two (2) more heat-sealed plastic sachets of suspected shabu. He marked the sachet subject of the sale “PMP”¹⁶ and the two confiscated sachets “PMP-1” and “PMP-2”¹⁷ in the presence of appellant and PO1 Berdonar. He put back the two (2) sachets marked as “PMP-1” and “PMP-2” inside the Marlboro box¹⁸ and slid the box into his left pocket, and the sachet he purchased, into his right pocket. After PO1 Berdonar informed appellant of his constitutional rights, the latter was brought to Balanga City Police Station.¹⁹

At the station, the confiscated items were inventoried and photographed in the presence of appellant, PO1 Berdonar, DOJ representative Villamor Sanchez and Barangay Kagawad Armando Zabala who all signed the inventory²⁰ of seized items.²¹

After the inventory, he (PO1 Pajarin) brought the confiscated items with markings “PMP,” “PMP-1” and “PMP-2” to the Bataan Crime Laboratory for examination. He also submitted a request for appellant’s drug test. The items and appellant were turned over to PO2 Dorigo and PCI Santiago.²²

¹³ Name of team leader appeared in the Sinumpaang Salaysay of PO1 Pajarin and PO1 Berdonar, *supra* note 7.

¹⁴ TSN dated November 10, 2016, pp. 6-7.

¹⁵ *Id.* at 8-9.

¹⁶ Exhibit N, *id.* at 11.

¹⁷ Exhibits O and O-1, *id.*

¹⁸ Exhibit O-2, *id.* at 12.

¹⁹ *Id.* at 9-11.

²⁰ Exhibit F, Record (Crim. Case No. 16058), p. 102.

²¹ TSN dated November 10, 2016, pp. 12-13.

²² *Id.* at 13-15.

Forensic Chemist, PCI Vernon Rey Santiago did a chemical test on the specimens which yielded positive results for methamphetamine hydrochloride. Appellant's urine test yielded the same positive results.²³

A Spot Report was submitted to the PDEA on the buy-bust operation, appellant's arrest, and the seizure from appellant of three (3) sachets containing suspected shabu.²⁴

The prosecution submitted the following object and documentary evidence: a) Sinumpaang Salaysay of PO1 Paul Nemen M. Pajarin,²⁵ b) Sinumpaang Salaysay of PO1 Elton P. Berdonar,²⁶ c) Certificate of Coordination,²⁷ d) Coordination Form,²⁸ e) Pre-Operation Report,²⁹ f) Inventory Receipt of property/ies seized,³⁰ g) Pictures taken during the inventory,³¹ h) Request for Laboratory Examination,³² i) Chemistry Report No. D-358-16 Bataan,³³ j) Request for Drug Testing,³⁴ k) Chemistry Report No. DT-286-16 Bataan,³⁵ l) Spot Report³⁶ m) P500.00 bill,³⁷ n) Specimen with marking "PMP,"³⁸ o) Specimen with markings "PMP-1" and "PMP-2,"³⁹ and p) one (1) box of Marlboro country cigarette with marking "PMP-3."⁴⁰

The Defense' Version

Appellant testified that on July 1, 2016, around 5 o'clock in the afternoon, he went to Balanga City to buy vitamins for his two (2) children. He then decided to buy food at a nearby store called Vercons. He parked his motorcycle near the Petron gasoline station because the store's parking area was already full.⁴¹

When he returned from Vercons, he boarded his motorcycle and was about to rev the engine when a silver Toyota Innova blocked his path. Four (4) men alighted from the car and accosted him. At gun point, the men handcuffed him and took his bag. He asked what was it all about but they did not reply. They covered his head and forced him into the car. There, they took his cellphone, ID, a box of cigarettes and P3,000.00 cash. The men also

²³ *Id.* at 14-15; Exhibits H-K, Record (Crim. Case No. 16058), pp. 104-107.

²⁴ TSN dated November 10, 2016, p. 16.

²⁵ Exhibits A-A2, Record (Crim. Case No. 16058), pp. 95-96.

²⁶ Exhibits B-B1, *id.* at 97-98.

²⁷ Exhibit C, *supra* note 11.

²⁸ Exhibit D, *supra* note 9.

²⁹ Exhibit E, *supra* note 10.

³⁰ Exhibit F, *id.* at 102.

³¹ Exhibit G, *id.* at 103.

³² Exhibit H, *id.* at 104.

³³ Exhibit I, *id.* at 105.

³⁴ Exhibit J, *id.* at 106.

³⁵ Exhibit K, *id.* at 107.

³⁶ Exhibit L, *id.* at 108.

³⁷ Exhibit M, *id.* at 109.

³⁸ Exhibit N, *supra* note 16.

³⁹ Exhibits O and O-1, *supra* note 17.

⁴⁰ Exhibit O-2, *supra* note 18.

⁴¹ Panghukumang Salaysay, Record (Crim. Case No. 16058), pp. 117-119.

took turns punching and kicking him in different parts of his body while forcing him to produce the drugs which they claimed he was carrying.⁴²

When they arrived at the safe house, the men again repeatedly hit him and ordered him to produce the drugs until 9 o'clock in the evening or a case will be filed against him. At 9 o'clock in the morning, he was brought to the Balanga City Police Station where he was shown three (3) sachets of shabu, cash, and a cigarette packet all of which were allegedly recovered from him. He denied the items were his, claiming the police merely planted them on him.⁴³

On cross, appellant admitted that he did not park at the food store parking area near Vercons. Instead, he still crossed the main street where he parked his motorcycle. He also said that because of the beatings he got from the police, he suffered a foot injury. He acknowledged that he was examined at the Bataan General Hospital but did not present proof of his alleged foot injury. He stated he did not file a complaint against the police officers who caused his injury because they allegedly threatened him. He admitted though that he had never before met the police officers who arrested him.⁴⁴

The Trial Court's Ruling

As borne in its Joint Decision⁴⁵ dated July 12, 2017, the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, in view of the foregoing, accused, **ROSENDO LEAÑO y LEAÑO** is found **GUILTY BEYOND REASONABLE DOUBT**:

a. For violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 16058 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** without eligibility for parole and to **PAY** the fine of **FIVE HUNDRED THOUSAND PESOS (Php500,000.00)**.

b. For violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 16059 and is hereby sentenced to suffer the penalty of imprisonment of **FIFTEEN (15) YEARS AND ONE (1) DAY as minimum to TWENTY YEARS (20) YEARS as maximum** without eligibility for parole and to pay the fine of **THREE HUNDRED THOUSAND PESOS (Php300,000.00)**.

⁴² *Id.* at 118-119.

⁴³ *Id.* at 119.

⁴⁴ TSN dated June 28, 2017, pp. 3-7.

⁴⁵ CA *rollo*, pp. 39-53.



SO ORDERED.

The Proceedings Before the Court of Appeals

Appellant faulted the trial court for rendering a verdict of conviction despite the buy-bust team's alleged procedural lapses in conducting the entrapment operation and the prosecution's failure to establish compliance with the chain of custody which affected the integrity of the *corpus delicti*.⁴⁶

On the other hand, the Office of the Solicitor General (OSG) defended the verdict of conviction. It argued that PO1 Pajarin's testimony satisfactorily established the elements of the crimes charged. The items seized from appellant were confirmed to be shabu. The prosecution witnesses' positive and clear testimony of what transpired before, during, and after the buy-bust operation until the confiscated items were inventoried and examined, prevailed over appellant's denial or theory of frame-up.

The Court of Appeals' Ruling

The Court of Appeals affirmed through its assailed Decision dated September 14, 2018.⁴⁷ It concluded that the arresting officers complied with requirements of Section 21 of RA 9165. It dispensed with the presence of the media representative as the inventory was done before a kagawad and a DOJ representative. Too, it ruled that the inventory was not required to be done at the scene of the crime as it may be done at the police station or office of the apprehending officers in case of *in flagrante delicto* arrests. It also ruled that the integrity of the seized items was not diminished when PO1 Pajarin temporarily slid the same into his pockets while he was conducting the arrest. It held that the plastic sachets containing *shabu* marked by PO1 Pajarin and those submitted to and tested at the crime laboratory and finally offered in court were the same items seized from appellant.⁴⁸

The Present Appeal

Appellant now seeks anew a verdict of acquittal. In compliance with Resolution dated September 25, 2019, appellant and OSG manifested⁴⁹ that they were adopting their respective briefs submitted to the Court of Appeals.

Appellant essentially argues that the police officers repeatedly breached the chain of custody rule, as follows : (1) the marking of the

⁴⁶ *Id.* at 24-35.

⁴⁷ Penned by Associate Justice Ricardo R. Rosario and concurred in by now Supreme Court Associate Justice Ramon Paul L. Hernando and Associate Justice Gabriel T. Robeniol.

⁴⁸ *Supra* note 2.

⁴⁹ *Id.* at 26-28, 30-31.

seized items was defective for it did not show the date, time, and place of seizure, (2) the police officer merely slid the confiscated items into his pockets instead of securing them inside an envelope or evidence bag, (3) the photographing and inventory of the seized items were not done at the place of arrest, and (4) there was no justification for the procedural deviations in this case.

On the other hand, the OSG maintains that the identity, integrity, and evidentiary value of the seized drugs had been duly preserved despite the minor lapses, hence, the verdict of conviction should stay in place.⁵⁰

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies in the handling of the drugs in question?

Ruling

Appellant was charged with unauthorized sale and possession of dangerous drugs allegedly committed on July 1, 2016. The applicable law is RA 9165, as amended by Republic Act No. 10640 (RA 10640). Section 21 thereof prescribes the standard in preserving the *corpus delicti* in illegal drugs cases:

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:

(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 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

⁵⁰ CA rollo, pp. 57-73.

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, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, 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, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals 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.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.⁵¹ Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.⁵²

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: **first**, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; **second**, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; **third**, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and **fourth**, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁵³

The chain of custody rule came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.⁵⁴

The **first link** speaks of seizure and marking which should be immediately done at the place of arrest and seizure. It includes the physical

⁵¹ *People v. Barte*, 806 Phil. 533, 542 (2017).

⁵² *People v. Ameril*, G.R. No. 222192, March 13, 2019.

⁵³ *People v. Luminda*, G.R. No. 229661, November 20, 2019.

⁵⁴ *People v. Bombasi*, G.R. No. 230555, October 9, 2019.

inventory and taking of photographs of the seized items in the presence of the accused and third-party witnesses.

*People v. Martinez*⁵⁵ instructs that consistency with the "chain of custody" rule requires that the "marking" of the seized items - to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence - should be done in the presence of the apprehended violator immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft. For greater specificity, "marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized. Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.

Here, PO1 Pajarin marked the sachets of shabu at the place of arrest but without the presence of any insulating witnesses required under Sec. 21, RA 9165, as amended. As for the physical inventory and photographing of the seized items, the same were done not in the place of arrest but in the police station. The prosecution failed to offer any explanation for these procedural deviations, thus:

Pros. Punay:

x x x

x x x

x x x

Q What did you do with those two (2) sachets that you were able to recover from his possession?

A I put markings with my initials, mam.

Q What markings did you place?

A PMP-1 and PMP-2, mam.

Q Who were present during the marking?

A @Totong and our asset and PO1 Berdonar, mam.

Q After you marked those two (2) sachets, what did you do next?

A Thereafter, I put markings on the sachet I purchased from him, mam.

Q What markings did you place?

A I put my initials – PMP, mam.

Q If those sachets will be shown to you, will you be able to identify it?

A Yes, mam.

⁵⁵ 652 Phil. 347, 377 (2010).

Q By the way, from which pocket were you able to confiscate the two (2) sachets of shabu?

A Right pocket, mam.

Q What else were you able to confiscate from the accused aside from the two (2) sachets?

A I was able to recover the marked money from him, mam.

Q Anything else?

A None else, mam.

Q Are you sure?

A Yes, mam.

Q Showing to you clear plastic containing several evidences (sic) please go over the same and identify the sachet which you earlier mentioned?

A (witness is taking from a clear plastic and took out smaller sachets as well as a box of Marlboro cigarette)

Q Can you please identify the sachet that you were able to buy from the accused?

A (witness is pointing to a sachet with marking PMP.)

The sachet identified by the witness was previously marked as Exhibit N.

Q How about the other two (2) sachets?

A PMP-1 and PMP-2 as the sachets I recovered from the accused, mam.

The sachets identified by the witness were previously marked as Exhibits O and O-1.

Q And you took out from this evidence; this big plastic white box of Marlboro cigarette; what is the relation of that box?

A The two (2) sachets of shabu I recovered from his right pocket were contained in this Marlboro box, mam.

Q When I asked you earlier if there were anything else you were able to recover from the accused, why did you not mention the Marlboro box?

A I just failed to mention it, mam.

Q Why did you not mention it?

A I just forgot to mention about the box, mam.

Q After you marked the specimen(s) you brought and purchased from the accused, what did you do with the specimen(s)?

A I put the specimen(s) back inside the box and I placed (them) inside my pocket, mam.

Q What happened next?

A After informing @Totong of his constitutional rights, we brought him to the police station, mam.

- Q And from the buy-bust area up to the police station, who is in possession of the specimen(s)?
A I, mam.
- Q How were you possessing (them)?
A (They were) inside my pocket, mam.

By the way, the Marlboro box identified by the witness was previously marked as Exhibit O-2.
- Q What happened at the police station?
A We prepared the inventory receipt for the inventory of the evidence, mam.
- Q What is your proof that indeed there was an inventory conducted before the police station?
A There were photographs, mam.
- Q If the inventory receipt and photographs will be shown to you, will you be able to identify it?
A Yes, mam.
- Q Showing to you Exhibit F-Inventory receipt of property seized, can you go over the same and tell us what is the relation of that to the one you are referring to?
A This is the inventory receipt we prepared, mam.
- Q And in that inventory receipt appears several signatures, whose signatures are those?
A The signatures of the arresting officer, my signature, signature of PO1 Berdonar, signature of Rosendo Leaño, signature of Barangay Kagawad Armando Zabala and signature of DOJ representative-Villamor Sanchez, mam.
- Q How did you know that those were their signature?
A I was present when they affixed their signatures, mam.
- Q You also mentioned of pictures, I am showing to you pictures marked as Exhibits G and G-1; will you please go over these and tell us what is the relation of these to the (one) you are referring to?
A (the witness is pointing to the picture; the person wearing shorts identifying as himself; beside him is the DOJ representative-Villamor Sanchez, PO1 Berdonar, Kagawad Zabala and the accused Rosendo L. Leaño.)
- Q Who took those pictures?
A One of the duty officers at that time, mam.
- Q Where were those pictures taken?
A At the Balanga City Police Station (BCPS), mam.
- Q How about the second picture?
A This is the inventory receipt we prepared as well as the marked money, the specimen and the box, mam.

- Q After the inventory, what happened to the specimen?
A After the inventory I brought the specimen to the Crime Laboratory, mam.⁵⁶

x x x

x x x

x x x

Section 21 of RA 9165 requires that police operatives must mark, inventory, and photograph the seized items **immediately** after seizure or confiscation to maintain the integrity of the confiscated drugs to be used as evidence. For with the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.⁵⁷

Too, in *People v. Asaytuno, Jr.*⁵⁸ citing *People v. Tomawis*,⁵⁹ the Court has emphasized the importance of the required insulating witnesses at the time of seizure and confiscation, thus:

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest.

It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished - does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation." (Emphasis supplied)

⁵⁶ TSN dated November 10, 2016, pp. 9-13.

⁵⁷ *People v. Manabat*, G.R. No. 242947, July 17, 2019.

⁵⁸ G.R. No. 245972, December 2, 2019.

⁵⁹ G.R. No. 228890, April 18, 2018, 862 SCRA 131, 150.



While their absence at the place of arrest may be excused as we have held in *People v. Lim*⁶⁰ when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault, nothing of such nature existed in this case. The prosecution failed to acknowledge the procedural deficiencies in handling the seized drugs here, much less, offer any explanation why the police officers deviated from the prescribed procedures.

In any event, the subsequent inventory and photographing of the seized items at the police station in the presence of appellant, Barangay Kagawad Zabala, and DOJ representative Sanchez did not validate the incipiently defective marking, and failure to conduct the inventory and photographing themselves at the *situs criminis*.

Another. PO1 Pajarin admitted sliding one seized sachet into his left pocket and another into his right pocket and keeping them the whole time until their turnover to the laboratory for examination.

In *People v. Dela Cruz*,⁶¹ the Court held that a single police officer's act of bodily keeping the seized drugs is viewed with distrust, fraught with dangers, reckless, if not dubious, and a doubtful and suspicious way of ensuring the integrity of the items, thus:

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counterchecking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

⁶⁰ G.R. No. 231989, September 4, 2018.

⁶¹ 744 Phil. 816, 834-835 (2014).

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21. (Emphasis supplied)

In *Dela Cruz*, the Court, too, rejected the segregation in two (2) different pockets of the seized dangerous drugs as a sufficient measure to preserve the integrity of the illicit drugs. Placing the confiscated drugs, even if marked, inside the pocket of one (1) of the arresting police officers is not the proper way of securing the seized drugs. For no one would know what other things are inside his or her pockets and what could have come out of the same.

The *second link* refers to the turnover of the seized drug from the apprehending officer to the investigating officer, and the *third link*, to its turnover by the investigating officer to the forensic chemist for laboratory examination.

Here, no testimony was offered relating to the transmittal of the subject sachets from the arresting officer to the investigating officer. There was also no mention of how the seized items were handled after the inventory up to the time the items were handed over to the forensic chemist. PO1 Pajarin merely testified that after the inventory, he brought the items to the laboratory for examination. The information gap after the inventory up till the submission of the seized items for laboratory examination was not explained, thus, casting doubt on the condition of the seized items under the custody of PO1 Pajarin.

The Court, in *People v. Gayoso*,⁶² acquitted Gayoso because the prosecution failed to adduce evidence on how the seized drug was handled during the second and third links. The Court ruled that considering this series of intervening gaps, it cannot be reasonably concluded that the confiscated item was the same one presented for laboratory examination and eventually presented in court.

Lastly, the *fourth link* pertains to the turnover and submission of the seized items from the forensic chemist to the court. To dispense with the forensic chemist's testimony, both the prosecution and the defense offered for stipulation PCI Santiago's expertise and qualifications, delivery, submission and receipt of the specimens for laboratory examination and the results thereof, and the admission that the specimens brought for examination were the same ones which PCI Santiago examined. The prosecution, however, failed to prove the manner by which the specimens

⁶² 808 Phil. 19, 33-34 (2017).

were handled before PCI Santiago received them, how he examined the items, and how these items were stored or kept in custody until they were presented as evidence in court.

In *People v. Ubungen*⁶³ citing *People v. Pajarin*,⁶⁴ the Court ruled that in case of stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial. Here, the parties' stipulation did not mention that these precautionary steps were in fact done by the forensic chemist.


In light of the foregoing considerations, the chain of custody here was breached several times over starting from the first link all the way through the fourth link. Verily, it cannot be said that the identity and integrity of the *corpus delicti*, including its evidentiary value were deemed preserved. A verdict of acquittal is indubitably in order.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated September 14, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09528 is **SET ASIDE**.

Appellant **Rosendo Leño y Leño** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice.

Let an entry of judgment immediately issue.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

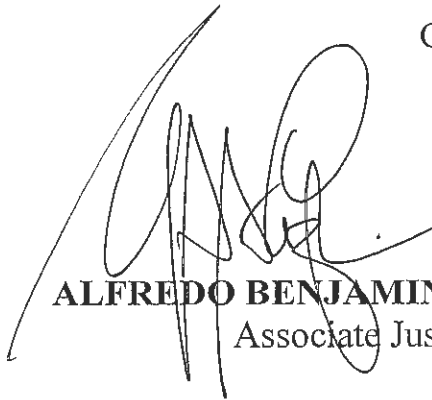
⁶³ G.R. No. 225497, July 23, 2018.

⁶⁴ 654 Phil. 461, 466 (2011).

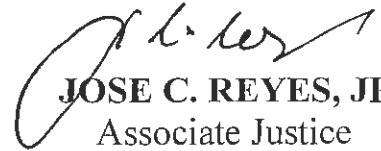
WE CONCUR:



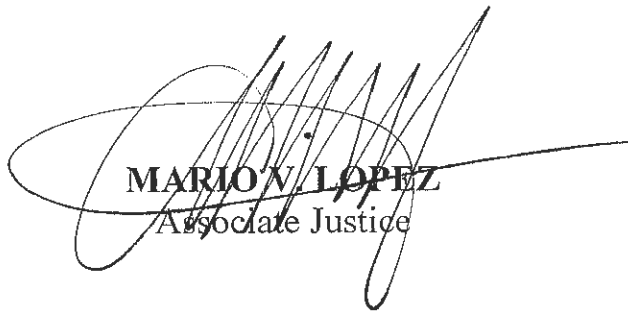
DIOSDADO M. PERALTA
Chief Justice
Chairperson – First Division



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VII 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.



DIOSDADO M. PERALTA
Chief Justice

