10

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **September 8, 2014** *which reads as follows:*

"G.R. No. 188558 –*PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. JIMMY REMILLA y REVILLO alias "SIMBAD" and LORNA TIMAN y NAVARRO, Accused-Appellants.*

We review the decision promulgated on February 26, 2009,[1] whereby the Court of Appeals (CA) affirmed the conviction of the accused for violation of Section 5 of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) under the judgment rendered by the Regional Trial Court (RTC), Branch 2, in Manila dated November 14, 2007,[2] as follows:

> **WHEREFORE**, the judgment is hereby rendered as follows, to wit:
>
> 1. In Criminal Case No. 05-235723 finding both accused, Lorna Timan y Navarro and Jimmy Remilla y Revillo @ Simbad, **GUILTY** beyond reasonable doubt of the crime charged, they are hereby sentenced each to life imprisonment and to pay the fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.
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> 2. In Criminal Case No. 05-235724, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, we hereby **ACQUIT** accused, Ada de Velusa y Cardivida, of the crime charged. Costs de officio.
>
> 3. In Criminal Case No. 05-235725, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, we hereby **ACQUIT** accused, Jimmy Remilla y Revillo @ Simbad, of the crime charged. Costs de officio.

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[1] *Rollo*, pp. 3-19; penned by Associate Justice Portia Aliño-Hormachuelos (retired), with Associate Justice Jose Catral Mendoza (now a Member of the Court) and Associate Justice Ramon Bato concurring.
[2] Records, pp. 142-152.

- over – sevent (7) pages .....

> The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.
>
> SO ORDERED.[3]

Appellants Jimmy Remilla and Lorna Timan were charged with the violation of Section 5 in relation to Section 26, both of Republic Act No. 9165, in the information filed by the Office of the City Prosecutor of Manila in the RTC,[4] alleging thusly:

> That on or about April 5, 2005, in the City of Manila, Philippines, the said accused conspiring and confederating together and mutually helping each other, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell two (2) heat sealed transparent plastic sachets containing ZERO POINT ZERO ONE FOUR (0.014) and ZERO POINT ZERO ONE THREE (0.013) gram of white crystalline substance known as "shabu" containing methylamphetamine hydrochloride, which is a dangerous drug.
>
> Contrary to law.[5]

The appellants pleaded *not guilty* on arraignment.[6]

The records show that on April 5, 2005, the District Anti-Illegal Drugs-Special Operations Task Group (DAID-SOTG) of the Manila Police District received a report from a confidential informant that Remilla and Timan were engaging in selling *shabu* at J. Rodriguez Balut, Tondo, Manila; that the DAID-SOTG then formed a buy-bust team comprised by SPO3 Arnold Manzon, SPO1 Nestor Dagami, PO3 Mike Ongpauco and PO2 Michael Quiambao to conduct an entrapment of the suspects; that SPO3 Manzon was designated as the poseur-buyer, and given two ₱100.00 bills marked with his initials "AM" written on the logo of the Bangko Sentral ng Pilipinas found on the bills; that the team later on proceeded to the designated area where they took their positions; that PO3 Manzon and the confidential informant approached Remilla and Timan who had emerged from an alley;[7] that the informant introduced SPO3 Manzon as the person interested in buying ₱200.00 worth of *shabu*; that Remilla asked for the payment, and SPO3 Manzon gave to him the marked bills; that Timan then handed over to SPO3 Manzon two heat-sealed transparent sachets containing white crystalline substances; that SPO3 Manzon then gave the

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3 Id. at 151-152.
4 Id. at 2.
5 CA *rollo*, p. 8.
6 Id. at 17.
7 TSN dated July 18, 2006, pp. 2-5.

prearranged signal and quickly introduced himself as a police officer, arresting Timan; that the rest of the team approached and arrested Remilla and one Ada Velusa, his common-law-wife; that SPO1 Dagami retrieved the marked bills and one heat-sealed transparent plastic sachet containing white crystalline substance from Remilla;[8] that another sachet was recovered from Ada;[9] that the team then returned to their office and turned over the marked bills and the four sachets of white crystalline substance recovered from Remilla and Timan to PO2 Julieto Malindog, who, in the presence of the arrestees, marked the sachets as DAID-1, DAID-2, DAID-3 and DAID-4;[10] that P/Insp. Rodolfo Asejo Llorca, Chief of the DAID-SOTG, requested the crime laboratory in writing to conduct an examination on the seized items; and that on the same day, P/Sr. Insp. Judycel A. Macapagal, the Forensic Chemist, issued Chemistry Report No. D-347-05[11] in which were rendered the findings that all four transparent heat-sealed sachets contained methylamphetamine hydrocholoride or *shabu*.

Timan and Remilla denied the charge. They claimed that Timan was in the second floor of Remilla's apartment to get a VCD that the latter had borrowed; that somebody had kicked the door of the room, prompting Remilla to open the door to step out; that several armed men in civilian attire had then rushed in demanding to know their names; that the men searched the premises, but did not recover anything; that the men told them that they were looking for Norma; that Ada, who was downstairs, heard the commotion, and went upstairs to find out what was happening there; that the men also seized her, ostensibly because they could not find Norma, the person they were looking for; and that the men then brought the three of them to the DAID office.[12]

As stated, on November 14, 2007, the RTC rendered judgment convicting Timan and Remilla for violation of Section 5 of Republic Act No. 9165, and the CA affirmed the conviction.

In this Court, the appellants insist that:

> THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE PROSECUTION'S FAILURE TO PROVE THAT THE *SHABU* SUBMITTED FOR LABORATORY EXAMINATION WAS THE SAME ONE SOLD TO THE POSEUR-BUYER[13]

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8 TSN dated August 11, 2006, p. 6.
9 TSN dated July 18, 2006, p. 7.
10 Id. at 7.
11 Records, p. 10.
12 TSN dated May 28, 2007, pp. 3-7.
13 CA *rollo*, p. 43.

The appellants maintain that the Prosecution did not establish the integrity of the seized items because the police did not immediately mark the items upon seizure, but only at the police station; that the arresting officers did not take photographs of the seized items, and did not render an inventory of them; that the omissions contravened Section 21 of Republic Act No. 9165; and that the chain of custody was consequently broken also because there was no showing as to who had brought the seized items to the crime laboratory.[14]

We affirm the appellants' conviction.

In *People v. Amansec*,[15] the Court declared that the arrest of the accused should not be declared illegal, or that the seized items should not be held inadmissible despite the failure of the Prosecution to submit the physical inventory and photographs of the seized drugs required under Section 21 of Republic Act No. 9165. What was more relevant in the prosecution of cases involving dangerous drugs was the preservation of the integrity and evidentiary value of the seized items which were indispensable in ascertaining the guilt or innocence of the accused.[16]

Although the buy-bust team did not strictly comply with the procedures outlined in Section 21 of Republic Act No. 9165, the CA found, and correctly so, that such non-compliance neither negated the integrity nor diminished the evidentiary value of the items seized from the appellants, *viz*:

> Accused-appellants contend that the prosecution failed to prove the very existence of the corpus delicti of the offense; that the arresting officers failed to immediately mark the plastic sachets which were the subject of the sale as the same were only marked at the police station by the investigator; and that they likewise failed to photograph the contrabands and make an inventory of the same.
>
> We do not agree. Appellants based their contentions in Section 21, par. (1) of R.A. No. 9165 which provides:
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> > "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, 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:

[14] Id. at 49-53.
[15] G.R. No. 186131, December 14, 2011, 662 SCRA 574.
[16] Id. at 594.

> (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 copies of the inventory and be given a copy thereof:
>
> x x x x

However, Section 21 of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides:

> "Section 21. A. x x x 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.["]

Based on the above IRR, it is beyond cavil that the failure of the law enforcers to comply strictly with Section 21 of R.A. No. 9165 is not fatal. Non-compliance does not render the arrest of an accused illegal of the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the case at bar, We find that the integrity and the evidentiary value of the items involved were safeguarded. The items seized were immediately marked for proper identification after the arresting officers handed over the same to PO2 Malindog. Thereafter, they were forwarded to the Crime Laboratory for examination.

Whatever justifiable ground may have excused the police officers involved in the buy-bust operation from complying with Section 21 will remain unknown, because appellants failed to question during trial the safekeeping of the items seized from them. The alleged violation of Section 21 by the police officers was not raised before the trial court but was instead raised to Us for the first time in this appeal. In no instance did appellants at least intimate to the trial court that there were lapses in the safekeeping of the seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raised the question for the first time on appeal.

Moreover, We do not find any reversible error on the part of the trial court in arriving at its findings. Appellants' defense of denial, just like alibi, is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of a credible witness who testifies on affirmative matters. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail.

> The defense, notably, failed to ascribe improper motive on the part of the police officers. It is a settled rule that in cases involving violations of Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers or deviation from the regular performance of their duties. Their testimonies with respect to the operation deserve full faith and credit. The testimonies of appellants that they were in the house when the police officers suddenly barged therein looking for a person unknown to them, is of no probative value. In the absence of competent proof of motive to falsely impute such a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over the defense of denial and frame-up of the accused.[17]

We agree with the foregoing findings and conclusions of the CA. Verily, the State established an unbroken chain of custody of the seized drugs from the moment of seizure from the appellants down to the time of their presentation as evidence against them in the trial court. In every prosecution of illegal sale of dangerous drugs, it is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*,[18] that is material and crucial. Inasmuch as the State sufficiently established both elements, we uphold the unanimous findings of the RTC and the CA.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on February 26, 2009; and **ORDERS** the appellants to pay the costs of suit.

SO ORDERED." ***SERENO, C.J.***, on leave; ***VELASCO, JR., J.,*** acting member per S.O. No. 1772 dated August 28, 2014.

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court

111

The Solicitor General (x)
Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR H.C. No. 03110)

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[17] *Rollo*, pp. 14-18.

[18] *People v. Mala*, G.R. No. 152351, September 18, 2003, 411 SCRA 327, 334; *People v. Padasin*, G.R. No. 143671, February 14, 2003, 397 SCRA 417, 428.

The Director
Bureau of Corrections
1770 Muntinlupa City

The Hon. Presiding Judge
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(Crim. Case No. 05-235723)

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