



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 3, 2020** which reads as follows:*

“G.R. No. 241609 (Michael Abidan y Basilio v. People of the Philippines).-

This is a Petition for Review on *Certiorari* filed by Michael Abidan y Basilio (petitioner) assailing the April 25, 2018 Decision¹ and August 16, 2018 Resolution² of the Court of Appeals (CA) in CA-G.R. CR No. 39986, which dismissed petitioner’s appeal from a conviction for violation of Section (Sec.) 11, Article (Art.) II, Republic Act (R.A.) No. 9165 or “The Comprehensive Dangerous Drugs Act of 2002.”

The case stemmed from an Information³ charging petitioner, as follows:

That, on or about the 16th day of July 2012 in the Municipality of Cardona, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and knowingly possess and have in his possession, custody and control 0.03 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which substance was found positive to the test of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.⁴

¹ Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rodil V. Zalameda (now a Member of this Court) and Renato C. Francisco, concurring; *rollo*, pp. 33-45.

² *Id.* at 47-48.

³ *Id.* at 34.

⁴ *Id.*

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During trial, Police Officer 1 Fernan Manimbo (PO1 Manimbo) testified that on July 16, 2012, at around 11:00 a.m., he was with Police Officer 2 Jeffrey Verano (PO2 Verano) at *Barangay* Looc in Cardona, Rizal, when their motorcycle broke down. The police officers flagged down and boarded a public jeepney, where they sat across petitioner who nodded at them in greeting. PO1 Manimbo noticed that petitioner seemed uneasy and appeared to be inserting something behind him and his seat, when a plastic sachet suddenly fell from petitioner. PO2 Verano then held petitioner, while PO1 Manimbo picked up the plastic sachet on suspicion that it contained *shabu*. They allegedly fell from the jeepney during a struggle with petitioner. PO1 Manimbo called the mobile car afterwards and they proceeded to the Morong Provincial Hospital. For this reason, PO1 Manimbo did not mark and execute the inventory of the confiscated sachet at the place where petitioner was apprehended.⁵

PO1 Manimbo claimed to have kept the plastic sachet with him while at the hospital. Afterwards, at the Cardona Police Station, PO1 Manimbo marked the sachet with "MAB-1," prepared the laboratory request and chain of custody form, as well as the inventory of the confiscated item, witnessed by *Kagawad* Ponciano Herrera who was called to the station. PO1 Manimbo also photographed petitioner pointing at the specimen allegedly confiscated from the latter. The specimen and request for examination were then brought by PO1 Manimbo to the Rizal Provincial Crime Laboratory.⁶

Police Senior Inspector Beaune V. Villaraza (PSI Villaraza), forensic chemist assigned at the Rizal Provincial Crime Laboratory, testified that he received the Request for Laboratory Examination signed by the Chief of Police of the Cardona Police Station and delivered by PO1 Manimbo, together with a white crystalline substance in a heat-sealed plastic sachet marked "MAB-1." PSI Villaraza identified the Initial Laboratory Report and Chemistry Report No. D-338-12, which disclose that the substance tested positive for methamphetamine hydrochloride. After the laboratory examination, PSI Villaraza stored the specimen in the evidence vault.⁷

On the other hand, petitioner testified that on July 16, 2012, at around 9:00 a.m., he was on board a public jeepney on his way home to Cardona from his place of work in Binangonan when the jeep was

⁵ Id. at 35-36.

⁶ Id.

⁷ *Rollo*, pp. 34-35.

flagged down by PO2 Verano. PO1 Manimbo was with PO2 Verano, but only the latter boarded the jeep. Petitioner asked to be dropped off at Pantok, but was prevented from alighting by PO2 Verano who held on to his belt. When petitioner was able to wriggle off and alight, PO2 Verano also alighted. Petitioner saw PO1 Manimbo follow him on board a motorcycle. PO1 Manimbo eventually pinned down petitioner on the ground. Petitioner's hands were tied using his own belt and he was brought to the municipal hall where police officers asked him to handcuff himself after removing the belt. Petitioner was allegedly taken to the comfort room where he was mauled and kicked for about 30 minutes. To prove the mauling incident, petitioner presented a Medical Certificate showing he suffered multiple injuries secondary to mauling, as well as a photograph taken by a sibling inside the Intel Division on the day of arrest. A search by the police officers' errand boy allegedly yielded nothing but a small knife. Petitioner executed a *Reklamo-Salaysay* in relation to the injuries he claimed to have sustained in the hands of the police, but failed to file a case for fear that PO1 Manimbo will deliver on his threats, as well as due to financial constraints.⁸

When asked why the police would wrongfully arrest petitioner for a crime the latter claims he did not commit, petitioner explained that he saw his mistress with PO1 Manimbo on the night before the incident. Petitioner followed them on board a motorcycle and confronted his mistress via text message.⁹

Petitioner's sister, Maricel A. Flores (Flores), testified that on July 16, 2012, at around 9:00 a.m., she was informed that petitioner was arrested by police officers after being mauled. Flores immediately went to the place of arrest, but petitioner was no longer there. Flores then went to the police station where she saw petitioner bloodied, with clothes torn and slippers missing. Flores took photos of her brother, sent the photos to relatives, and had them printed. They planned on filing charges against the police officers, which they failed to pursue because they could not afford the expenses, such as transportation and photocopying, as they even had to borrow fare to go to Taytay.¹⁰

Finding petitioner guilty beyond reasonable doubt of the offense charged, the Regional Trial Court (RTC) of Binangonan,

⁸ Id. at 36-37.

⁹ Id. at 37-38.

¹⁰ Id. at 38-39.

Rizal, Branch 67, rendered judgment in a February 26, 2017 Decision,¹¹ disposing:

In light of the above, we find accused Mechael Abidan **GUILTY** beyond reasonable doubt of violating Section 11, Article II, R.A. No. 9165 and illegally possessing a total of 0.03 grams of Methamphetamine Hydrochloride or *shabu* and accordingly sentence him to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of P300,000.00. Bail posted for his provisional liberty is hereby **REVOKED** and we **ORDER** his immediate arrest. Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.

SO ORDERED.¹²

Petitioner appealed, assailing the testimony of PO1 Manimbo; the arresting officers' non-compliance with Sec. 21 of R.A. No. 9165; and the failure of the prosecution to prove the corpus *delicti* of the offense charged beyond reasonable doubt.¹³ The CA, however, dismissed petitioner's appeal through the currently assailed Decision¹⁴ dated April 25, 2018. Brushing aside the discrepancies as minor details, the CA ruled that the arresting officers' non-compliance with Sec. 21 of R.A. No. 9165 is not fatal to the prosecution, and the integrity and evidentiary value of the seized contraband were duly preserved.

The CA also denied petitioner's subsequent Motion for Reconsideration¹⁵ through the August 16, 2018 Resolution;¹⁶ hence, petitioner's present recourse.

Alleging misapprehension of facts on the part of the CA, despite the inconsistent and incredible testimony of PO1 Manimbo, the arresting officers' non-compliance with Sec. 21 of R.A. No. 9165, and the failure of the prosecution to prove the corpus *delicti* of the offense charged beyond reasonable doubt, the assigned errors in the present petition mirror those raised before the appellate court.¹⁷

¹¹ Id. at 73-74.

¹² Id. at 74.

¹³ Id. at 56.

¹⁴ Supra note 1.

¹⁵ *Rollo*, pp. 88-95.

¹⁶ Supra note 2.

¹⁷ *Rollo*, p. 19.

On March 15, 2019, the Office of the Solicitor General filed its Comment,¹⁸ echoing the conclusions of the lower courts. In response, petitioner filed a Reply¹⁹ on September 17, 2019, expressing serious doubts in the prosecution's evidence, which must be resolved in favor of petitioner's presumption of innocence.

There is merit in the petition.

We disagree with the CA when it upheld the integrity and evidentiary value of the allegedly seized sachet of *shabu*. "The illegal drug itself constitutes the *corpus delicti* of the offense. Its existence must be proved beyond reasonable doubt."²⁰ Thus, any reasonable doubt that the illegal drug presented in evidence is the same contraband that was allegedly in the possession of petitioner should have been laid to rest by the prosecution's evidence. Whether petitioner's or the arresting officers' version of the circumstances of the arrest were to be believed, observance of the proper procedure and safeguards in the marking of the allegedly seized sachet would have precluded any doubts.

Recalling *People v. Romy Lim*:²¹

At the time of the commission of the crimes, the law applicable is R.A. No. 9165. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the law, defines chain of custody as-

the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the

¹⁸ Id. at 102-110.

¹⁹ Id. at 114-121

²⁰ *People v. Lahmodin Ameril y Abdul*, G.R. No. 222192, March 13, 2019.

²¹ G.R. No. 231989, September 4, 2018.

seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.²²

Time and again, we have said that the prosecution bears the burden of establishing the following links in the chain of custody:

(1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.²³

The glaring lapse in this case pertains to the first link in the chain, which is the seizure and marking of the illegal drug allegedly recovered from the petitioner at the time of arrest. The lower courts' common conclusion that the arresting officers' non-compliance with Sec. 21 of R.A. No. 9165 is not fatal to the prosecution, has no basis in law or jurisprudence. Notably, the three-witness requirement was prevailing at the time of petitioner's arrest.

Section 21(1), Article II of R.A. No. 9165 states:

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 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[.]

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 mandates:

²² Id.

²³ Id.

(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.²⁴

According to PO1 Manimbo, they brought petitioner to the hospital for medical attention before heading to the police station, to explain why the marking and inventory of the evidence was not immediately conducted at the place of arrest or a place nearby. This is contradicted by the photo of petitioner at the police station on the day of the arrest, which showed him to still be in need of medical attention, given his bloodied appearance. We are thus inclined to believe petitioner's assertion that he was not taken to the hospital first, before he was brought to the police station.

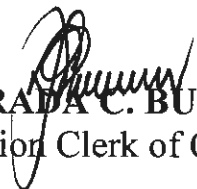
There is also no explanation as to why only one of the required witnesses was present at the inventory, much less anything on record of even the slightest attempt to secure the presence of all the required witnesses. This is especially crucial given that the photographic image of "MAB-1," the allegedly seized sachet, is unclear. In the face of the glaring lapses, there exists reasonable doubt on the integrity and evidentiary value of the sachet of *shabu* allegedly recovered from petitioner. Consequently, it is reversible error on the part of the CA to have affirmed petitioner's conviction because petitioner Mechael Abidan y Basilio should be acquitted based on reasonable doubt.

WHEREFORE, in light of the foregoing, the present petition is **GRANTED** and Mechael Abidan y Basilio is **ACQUITTED** for failure of the prosecution to establish his guilt beyond reasonable doubt. Consequently, petitioner's **IMMEDIATE RELEASE** is in order, unless petitioner is confined for other lawful cause.

²⁴ Id.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *m 10/16*

by:

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