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THIRD DIVISION

[G.R. No. 209785, June 04, 2014]

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. MARLON ABETONG Y ENDRADO, ACCUSED-APPELLANT.

D E C I S I O N

VELASCO JR., J.:

The Case

This treats of accused-appellant Marlon Abetong's appeal from the June 28, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01357 affirming his conviction beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Accused-appellant was charged in an Information[2] that reads:

> That on or about the 22nd day of August 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there wilfully, unlawfully and feloniously sell, deliver, give away to a police poseur buyer in a buy-bust operation one (1) heat-sealed transparent plastic packet containing methylamphetamine hydrochloride or shabu weighing 0.02 gram(s) more or less, in exchange for a price of P100.00 in mark money, consisting of two (2) P50.00 bill with Serial Nos. BZ323461 and CN467805, in violation of the aforementioned law.
>
> Act contrary to law.

During trial, prosecution witness Police Officer 3 Wilfredo Perez (PO3 Perez) of the Police Station 1, Bacolod City Police Office, testified that, in the morning of August 22, 2003, their office received information that a certain alias "Cano," later identified as accused-appellant, was selling drugs in his house at Purok Sigay, Barangay 2, Bacolod City. Police Senior Inspector Jonathan Lorilla (Inspector Lorilla) then called for a briefing for the conduct of a buy-bust operation against "Cano" and designated PO3 Perez as the poseur-buyer. In preparation for the operation, PO3 Perez initialled two (2) PhP 50 bills bearing Serial Nos. CN467805 and BZ323461, which were going to be used as marked money. After recording the details of the preparation in the police blotter, PO3 Perez and the informant proceeded to the address while Inspector Lorilla and some of his personnel tailed in a car.

Upon arrival at the target area, PO3 Perez and the asset knocked on the door and were greeted by accused-appellant, who asked the purpose of the visit. PO3 Perez answered that he wanted to buy PhP 100 worth of *shabu*. The two were ushered in by accused-appellant and once inside, PO3 Perez saw three persons sitting around a table, passing to one another a tooter and allegedly engaged in a pot session. The three were identified as Ricky Bayotas, Reynaldo Relos and Archie Berturan. PO3 Perez then drew two PhP 50 bills marked "WCP" and handed them over to accused-appellant who in turn gave him a plastic sachet containing white crystalline

substance from his right pocket.

After receiving the plastic sachet, PO3 Perez introduced himself as a police officer and signalled his back-up to effect the arrest of the four individuals. The suspects attempted to flee but their plans were foiled by the timely arrival of the other policemen. They were then brought to the police station where their arrest and the list of the items confiscated from them were entered in the police blotter. From their arrest until the items seized were transmitted to the Philippine National Police (PNP) Crime Laboratory, the pieces of evidence were allegedly under PO3 Perez's custody. In his testimony, PO3 Perez stated that he kept the items inside the evidence locker in the Drug Enforcement Unit Office, to which only Inspector Lorilla has a key.

On August 25, 2013, PO3 Perez brought the sachet containing crystalline substance and the tooter to the PNP Crime Laboratory for testing. The items were received by Inspector Augustina Ompoy (Inspector Ompoy), the Forensic Chemical Officer of the Regional PNP Crime Laboratory 6, Camp Delgado, Iloilo City, who then performed the necessary examinations on the items recovered.

Inspector Ompoy testified for the prosecution on the receipt in the PNP Crime Laboratory of the letter-request for laboratory examination of the specimens. According to her, she conducted quantitative and qualitative tests and found that the white crystalline substance in the plastic sachet tested positive for methamphetamine hydrochloride, a dangerous drug, weighing 0.04 gram while the tooter tested negative for any prohibited drug.

Accused-appellant, for his part, raised that he was illegally arrested, a defense corroborated by Crispin Mejorada, Jr., a friend and neighbor of the former. As succinctly put by the trial court:[3]

> Testifying in his defense, accused Marlon Abetong declared being at home in Purok Sigay, Brgy. 2, Bacolod City at 11:50 AM of August 22, 2003, sweeping the floor, alone. Suddenly, a male person entered the open door and held him by his pants. When Marlon asked what his fault was, the man answered to just go with him. The person was in civvies, fair-skinned and tall; he did not introduce himself. Marlon was handcuffed while they were at the foot-walk heading to 26th Aguinaldo Street, and searched, but nothing was recovered from him except his money – P9.00. Accused was made to board a vehicle at Aguinaldo; three handcuffed persons were inside. All four were brought to BAC-Up 2 and placed in a cell. Abetong was not informed of the cause of his arrest; no drugs were presented to him. He knew of the charge – Violation of Section 5, R.A. 9165 – only during arraignment in court.

The Ruling of the RTC

On May 25, 2011, the Regional Trial Court (RTC), Branch 47 in Bacolod City did not give credence to accused-appellant's defense and rendered a Decision[4] convicting him of the crime charged. To wit:

> WHEREFORE, finding accused Marlon Abetong y Endrardo **guilty** beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 (Sale, Delivery, etc. of Dangerous Drugs), as charged, judgment is hereby rendered sentencing him to suffer **Life Imprisonment** and to pay a fine of P500,000.00. He is also to bear the accessory penalty prescribed by law. Costs against accused.
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> The subject one (1) sachet of methamphetamine hydrochloride/shabu (Exh. "B-3-A") recovered/bought from him being a dangerous drug, the same is hereby ordered confiscated and/or forfeited in favor of the government, and to be forthwith delivered/turned over to the Philippine Drug Enforcement Agency (PDEA) provincial office for immediate destruction or disposition in accordance with law.

> The immediate commitment of accused to the national penitentiary for service of sentence is likewise further ordered.
>
> SO ORDERED.

Aggrieved, accused-appellant appealed to the CA, raising the sole issue that his guilt was not proved beyond reasonable doubt. He maintained that, assuming without conceding the validity of the buy-bust operation, the prosecution failed to sufficiently prove that the integrity of the evidence was preserved. Raising non-compliance with Sec. 21 of RA 9165, he argued, among others: (1) that the markings on the items seized do not bear the date and time of the confiscation, as required; (2) that about three days have passed since the items were confiscated before they were brought to the crime laboratory; and (3) that there was neither an inventory nor a photograph of the recovered plastic sachet. Accused-appellant likewise hinged his appeal on the fact that Inspector Lorilla, who had the only key to the evidence locker, did not testify during trial.

The Ruling of the CA

On June 28, 2013, the court *a quo* promulgated the assailed Decision denying the appeal. The *fallo* reads:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The decision dated May 25, 2011 of the Regional Trial Court Branch 47 in Bacolod City, convicting the accused-appellant of the offense charged and sentencing him to life imprisonment and to pay a fine of P500,000.00, is **AFFIRMED**.
>
> **SO ORDERED.**

In upholding the RTC conviction, the CA ratiocinated that the prosecution's evidence was sufficient to afford the court a reliable assurance that the evidence presented is one and the same as those confiscated from accused-appellant. Hence, this appeal.

The Court's Ruling

We find for accused-appellant.

Sec. 21 of RA 9165 or the *Comprehensive Dangerous Drugs Act of 2002*, in part, requires:

> **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 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;
>
> (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.

The case *People v. Musa*[5] was instrumental for the CA in justifying leniency in the compliance with Sec. 21 of RA 9165. Relying on the case, the CA dispensed with several procedural requirements resulting in accused-appellant's conviction. As cited:

> Since the "perfect chain" is almost always impossible to obtain, non-compliance with Sec. 21 of RA 9165, as stated in the Implementing Rules and Regulations, does not, without more, automatically render the seizure of the dangerous drug void, and evidence is admissible as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team.
>
> In the present case, accused-appellants insist on the police officer's non-compliance with the chain of custody rule since there was "no physical inventory and photograph of the seized items were taken in their presence or in the presence of their counsel, a representative from the media and the Department of Justice and an elective official."
>
> We, however, find these observations insignificant since a review of the evidence on record shows that the chain of custody rule has been sufficiently observed by the apprehending officers.

Jurisprudence indeed instructs that failure to observe strictly the above-quoted provision can be excused as long as (1) the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers and (2) non-compliance was attended by justifiable grounds.[6] However, the prosecution in this case was unsuccessful in showing that there was no opportunity for tampering, contamination, substitution, nor alteration of the specimens submitted. On the contrary, there is a dearth of evidence to show that the evidence presented was well-preserved. The prosecution likewise failed to offer any justification on why the afore-quoted provision was not complied with.

The prosecution failed to establish an unbroken chain of custody over the drug evidence

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And the risk of tampering, loss or mistake with respect to an exhibit of this nature is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. As a reasonable measure, in authenticating narcotic specimens, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied—a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[7]

The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of it.[8]

In the case at bar, the failure of Inspector Lorilla to testify is fatal to the prosecution's case. To recall, only PO3 Perez and Inspector Ompoy testified against accused-appellant. During his testimony, PO3 Perez admitted that he put the confiscated item in the evidence locker on August 22, 2003 for safekeeping and subsequently brought them to Inspector Ompoy at the crime laboratory on August 25, 2003.[9] During this three-day interval, the items were

allegedly kept inside the evidence locker to which only Inspector Lorilla has the key. As per the records:[10]

> Q: From the time that the items were confiscated on August 22, 2003 at around 11:50 in the morning up to the time it was delivered to the PNP Crime Laboratory on August 25, 2003 at 10:40 in the morning, where were the items kept?
>
> A: It was placed in the evidence locker of the Drug Enforcement Unit together with other exhibits.
>
> Q: Who placed the confiscated items inside the locker in the office of the Drug Enforcement Unit?
>
> A: Myself.
>
> Q: Who keeps the key to that locker?
>
> A: Police Inspector Jonathan Lorilla.
>
> Q: Aside from Police Inspector Jonathan Lorilla, is there any other person who has access to that locker?
>
> A: No more.

It is evident from this sequence of events that during the interim, Inspector Lorilla constructively acquired custody over the seized items. As the lone key holder and consequentially a link in the chain, Inspector Lorilla's testimony became indispensable in proving the guilt of accused-appellant beyond reasonable doubt. Only he could have testified that from August 22 to 25, 2003 no one else obtained the key from him for purposes of removing the items from their receptacle. Only he could have enlightened the courts on what safety mechanisms have been installed in order to preserve the integrity of the evidence acquired while inside the locker. Absent his testimony, therefore, it cannot be plausibly claimed that the chain of custody has sufficiently been established. To be sure, PO3 Perez did not even testify that he was assigned to safeguard the evidence locker for the said duration; only that he was the one who put it in and three days later took them out of the locker room before bringing them to the crime laboratory.

Requiring the key holder's testimony is especially significant in this case in view of the law enforcers' failure to deliver the confiscated items to the crime laboratory within 24 hours, as required under Sec. 21 of RA 9165. While the delay in itself is not fatal to the prosecution's case as it may be excused based on a justifiable ground, it exposes the items seized to a higher probability of being handled by even more personnel and, consequently, to a higher risk of tampering or alteration. Thus, the testimony of the key holder becomes necessary to attest to the fact that the integrity and evidentiary value of the confiscated evidence have been preserved.

The CA erred in applying the doctrine that the testimony of a lone prosecution witness, as long as it is credible and positive, can prove the guilt of the accused beyond reasonable doubt.[11] Such doctrine is unavailing in drugs cases wherein all who acquired custody over the confiscated items would necessarily have to testify in order to establish an unbroken chain. Additionally, worth noting is that PO3 Perez's testimony is not "*virtually free from any form of inconsistency and contradictions as to besmirch it with doubt and question*" contrary to the CA's findings.[12] In fact, it can be gleaned from the records that one of his key statements has been refuted by forensic chemist Ompoy herself.

Based on the affidavit[13] executed by PO3 Perez on August 25, 2003, three persons were

engaged in a pot session in the house of accused-appellant. However, when the tooter allegedly confiscated from the three was tested for dangerous drugs, the test yielded a negative result.[14] While the guilt of the three others is not an issue in this case, this is illustrative of a disparity in the prosecution's version of facts and militates against PO3 Perez's credibility.

The presumption of regularity has been overturned

The prosecution cannot skirt the issue of the broken chain of custody by relying on the presumption of regularity. This presumption, it must be stressed, is not conclusive. Any taint of irregularity affects the whole performance and should make the presumption unavailable.[15] The presumption, in other words, obtains only when nothing in the records suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where the official act in question is irregular on its face, as in this case, an adverse presumption arises as a matter of course.[16]

A perusal of the Information filed against accused-appellant and Inspector Ompoy's chemistry report reveals a glaring inconsistency in this case. As can be recalled, the Information charges accused-appellant of selling 0.02 gram of methamphetamine hydrochloride. Relative to the crime charged, Inspector Ompoy, on the other hand, testified[17] in the following wise:

> Q: Tell us what kind of tests did you conduct on the specimen?
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> A: This consists of the physical, chemical and confirmatory tests. In the physical this includes the weighing of the specimen out of its container. Specimen "A" weighs 0.04 gram of white crystalline substance. Then I proceeded to my chemical test in which Marqui and Simons tests were employed. In the Marqui test, a drop of Marqui reagent was added to the representative sample and it [yielded] orange-to-brown color which is indicative of the presence of methamphetamine hydrochloride. In the Simons test, Simons reagents 1, 2 and 3 were added to another representative sample and it produced a deep-blue color reaction, also indicative of the presence of methamphetamine hydrochloride.
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> x x x x
>
> Q: For the record, please read the description of Specimen "A"
>
> A: One heat-sealed transparent plastic packet with markings containing 0.04 gram of white crystalline substance, placed inside a staple-sealed transparent plastic bag with markings.

From the foregoing transcript, the incongruence between the weight of the drug accused-appellant is being charged of selling and the weight of the drug tested by the forensic chemist becomes patent. For sure, this discrepancy in the weight of the substance is fatal to the case of the prosecution.[18] It automatically casts doubt as to the identity of the item seized and of the one tested as it erases any assurance that the evidence being offered is indeed the same as the one recovered during the buy-bust operation.

Well-settled is that "the dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense, and in sustaining a conviction under RA 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. x x x Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the very same illegal drug actually recovered from the accused; otherwise, the prosecution for possession under RA 9165 fails."[19] Applying this precept in the case at bar, any guarantee of the drug item's preservation was effectively removed by the failure of the prosecution to describe consistently the very *corpus delicti* of the criminal offense.

The arresting officers unduly deviated from legal procedure

It is beyond dispute that the date and time of confiscation do not appear on the markings of the seized items. It cannot also be denied that no photograph was taken of the recovered items for documentation purposes. It is admitted that no representative from the media, from the Department of Justice, or any elective official was present to serve as witness in recording the arrest. The prosecution's testimonial evidence is likewise bereft of any allegation of efforts undertaken by the law enforcers to contact these representatives. Nevertheless, an accused can still be convicted in spite of these circumstances provided that a justifiable ground for excusing non-compliance with the requirements under Sec. 21 of RA 9165 has satisfactorily been established by the prosecution as required by jurisprudence and the law's implementing rules.

Such justifiable ground is wanting in this case. No explanation whatsoever was offered by PO3 Perez in his testimony justifying non-compliance. Without this justification, it was improper for the court *a quo* to affirm accused-appellant's conviction. To sustain the RTC and the CA's findings would render the legal requirements under Sec. 21 of RA 9165 inutile and would effectively diminish the safeguards offered by the law in favor of the accused.

WHEREFORE, the appeal is **GRANTED**. The June 28, 2013 Decision of the Court of Appeals is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Marlon Abetong y Endrano is hereby **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Prisons is ordered to immediately **RELEASE** accused-appellant from custody, unless he is being held for some other lawful cause, and to **INFORM** this Court, within five (5) days from receipt of this Decision, of the date accused-appellant was actually released from confinement.

SO ORDERED.

Peralta, Villarama, Jr., Mendoza, [*] and *Leonen, JJ.*, concur.

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[*] Acting member per Special Order No. 1691 dated May 22, 2014.

[1] Penned by Executive Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap.

[2] Records, p. 1.

[3] Id. at 224-225.

[4] Id. at 221-231.

[5] G.R. No. 199735, October 24, 2012, 684 SCRA 622.

[6] *People v. De Guzman*, G.R. No. 186498, March 26, 2010, 616 SCRA 652, 662.

[7] *Catuiran v. People*, G.R. No. 175647, May 8, 2009, 587 SCRA 567, 578-579.

[8] *People v. Arriola*, G.R. No. 187736, February 8, 2012, 665 SCRA 581, 597; citing *Mallillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[9] TSN, May 6, 2009, p. 24.

[10] Id. at 25.

[11] *People v. Abelita*, G.R. No. 96318, June 26, 1992, 210 SCRA 497.

[12] *Rollo*, p. 13.

[13] Records, p. 4.

[14] TSN, October 12, 2004, p. 6.

[15] *Cariño v. People*, G.R. No. 178757, March 13, 2009, 581 SCRA 388, 406.

[16] *People v. Capuno*, GR No. 185795, January 19, 2011, 640 SCRA 233, 251.

[17] TSN, October 12, 2004, pp. 3-4.

[18] *People v. Suan*, G.R. No. 184546, February 22, 2010, 613 SCRA 366.

[19] *People v. Climaco*, G.R. No. 199403, June 13, 2012, 672 SCRA 631, 641.
