

THIRD DIVISION

[G.R. No. 179757, September 13, 2017]

LEONARDO P. CASONA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

BERSAMIN, J.:

Too much reliance on the presumption of regularity in the performance of official duties on the part of the arresting officers in the prosecution of drug-related offenses is unwarranted if the records show noncompliance with the affirmative safeguards prescribed to preserve the chain of custody of the contraband. The presumption of regularity applies only when there is no showing of non-compliance.

The Case

The petitioner appeals the decision promulgated on March 30, 2007 in C.A.-G.R. CR No. 29905,^[1] whereby the Court of Appeals (CA) affirmed the decision rendered on August 29, 2005 by the Regional Trial Court (RTC), Branch 214, in Mandaluyong City convicting him of a violation of Section 11, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).^[2]

Antecedents

The Office of the City Prosecutor of Mandaluyong City charged the petitioner with illegal possession of *shabu* in violation of Section 11 of the *Comprehensive Dangerous Drugs Act of 2002*, alleging in the information as follows:

That on or about the 6th day of February 2004, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug, did, then and there willfully, unlawfully, and feloniously and knowingly have in his possession, custody and control two (2) heat-sealed transparent plastic sachets each containing 0.03 and 0.02 grams of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known as 'shabu' a dangerous drug, without corresponding license and prescription.

Contrary to law.^[3]

The CA adopted the summary of the evidence of the State as presented by the Office of the Solicitor General (OSG) in the *appellee's brief*, to wit:

On February 6, 2004, at 7:20 in the morning, the drug enforcement unit of the Mandaluyong City Police Station received a telephone call from a concerned citizen regarding an illegal drug activity in Barangay Poblacion, particularly in Paraiso Street. On the basis of said information, PO2 Oliver Yumul, the officer-in-charge of the said unit, called a meeting to conduct a surveillance operation in the said area.

Immediately after coordinating with the Philippine Drug Enforcement Agency

(PDEA), a team, composed of PO1 Gomez, PO1 Alfaro, PO1 Saipi, PO1 Madlangbayan, POS Adriano and their team leader, proceeded to the area.

Upon arrival thereat, PO1 Gomez and PO1 Alfaro stay (sic) inside the van while the rest of the group namely: PO1 Madalangbayan (sic), POS Adriano, PO1 Saipi and their team leader went off While walking in their civilian clothes, they saw two (2) male persons in the middle of Paraiso street exchanging something. PO1 Madalangbayan (sic), who was only an arm's length away from the two (2) suspects, saw one of them place a small plastic sachet in between his two (2) fingers and then hand it to the other. The person to whom the plastic sachet was handed turned out to be the appellant.

Immediately, the group approached appellant and his companion and introduced themselves as police officers. At that instance, appellant's companion ran away. The other police officers chased him but he escaped. Appellant, on the other hand, was prevented from fleeing by PO1 Madlangbayan who arrested him. Upon arrest, PO1 Madlangbayan noticed that appellant was holding a plastic sachet in his hand. After discovering that it contained suspected shabu, he ordered him to pull out the contents of his pocket. Consequently, PO1 Madlangbayan recovered another plastic sachet from appellant containing white crystalline substance.

PO1 Madlangbayan informed appellant of his constitutional rights and brought him to the Mandaluyong City Police Station for investigation. The plastic sachets recovered from appellant were submitted to the SOCO for chemical analysis which, after examination, yielded positive for the presence of methamphetamine hydrochloride, otherwise known as "shabu."^[4] (Citations omitted)

On the other hand, the petitioner vigorously denied the accusation. He insisted during the trial that he was on his way to the off-track betting station at around 7:20 pm on February 6, 2004 when he encountered police operatives from the Anti-Illegal Drugs Unit along Paraiso Street in Mandaluyong City who mentioned to him that they would be conducting a raid; that on his way back from the betting station he again encountered the same police operatives but this time they arrested him for allegedly selling *shabu*; that he resisted the arrest because he was surprised by their conduct, but to no avail; and that they brought him with them to the hospital before taking him to their office, where he was investigated and eventually detained.^[5]

Ruling of the RTC

On August 29, 2005, the RTC declared the petitioner guilty beyond reasonable doubt of the charge, to wit:

WHEREFORE, the prosecution having successfully established the guilt of the accused beyond reasonable doubt, he is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY and to pay a fine of P300,000.00.

Accused is credited in full of the preventive imprisonment he has served in confinement.

Let the physical evidence subject matter of this case be confiscated and forfeited in favor of the State and referred to the PDEA for proper disposition.

SO ORDERED.^[6]

Decision of the CA

On appeal, the CA affirmed the conviction, disposing:

In sum, we find no cogent reason to alter the findings of the trial court, and no ground to question its conclusions.

WHEREFORE, finding no reversible error committed by the trial court, the appealed Decision of the Regional Trial Court, Branch 214, Mandaluyong City in Criminal Case No. MC-04-7897-D, finding appellant Laonardo Casono (sic) y Perez guilty beyond reasonable doubt of the crime of Violation of Section 11, Article [II] of Republic Act 9165, the appeal is *hereby AFFIRMED IN TOTO*.

SO ORDERED.^[7]

The CA accorded more weight to the testimonies of the police officers based on the presumption of regularity in the performance of official duties and for lack of showing of any improper motive on their part to falsely testify against the petitioner. Also, it observed that the arresting police officers properly preserved the integrity of the dangerous drug.

Issue

The petitioner now seeks the reversal of the decision of the CA, and raises the sole issue of:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE PATENT WEAKNESS OF THE PROSECUTION EVIDENCE.^[8]

The petitioner submits that the testimony of PO1 Madlangbayan was not worthy of belief; that the police officers had no probable cause to apprehend him because they had acted only on the basis of information from an unnamed concerned citizen; and that the CA erred in finding that the chain of custody was preserved by the arresting officers.

The OSG counters that the submissions of the petitioner involved purely questions of fact that were beyond the ambit of the appeal of this nature; that the CA correctly found him guilty beyond reasonable doubt of the offense charged based on the testimony of PO1 Madlangbayan showing the presence of all the elements of the offense; and that the integrity and evidentiary value of the seized articles were preserved.

Ruling of the Court

The appeal is meritorious.

Every conviction for a crime should only be handed down after proof beyond reasonable doubt of the guilt of the accused for the crime charged has been adduced. "Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."^[9]

Such degree of proof fell short herein; hence, the Court sees it fit to acquit the petitioner.

First of all, it is wrong for the OSG to vigorously insist that this appeal by petition for review on *certiorari* could not be the occasion for the petitioner to argue in his favor that the CA erred in its appreciation and evaluation of the facts. Such insistence, though generally true, is not controlling in an appeal of a criminal conviction that opens the entire records of the trial to review. This can only mean that the Court is not to be limited to reviewing questions of law. As a consequence, the Court, in the course of its review, may also examine any error even if not assigned by the accused.

Secondly, the Court cannot ignore the very palpable permissiveness on the part of the RTC as

the trial court and of the CA as the intermediate appellate court in enforcing the statutory safeguards put in place by no less than Congress in order to ensure the integrity of the evidence to be presented against a violator of the *Comprehensive Dangerous Drugs Act of 2002*. Such permissiveness was contrary to the letter and spirit of the law, and should be rebuffed by not letting the unworthy conviction stand. This, because the State and its agents must be the first to comply with the safeguards; there would be lawlessness among the enforcers of the law otherwise.

There is no question that the *Comprehensive Dangerous Drugs Act of 2002* was enacted to revise the approaches in law enforcement involving drug-related offenses. The legislators then believed that the predecessor enactment, Republic Act No. 6425, as amended, did not include needed safeguards against evidence tampering or substitution. Among the new approaches was the incorporation of affirmative safeguards to deny wayward law enforcers apprehending violators any opportunity for tampering with the confiscated evidence, and to ensure the preservation of the integrity of the evidence from the moment of seizure until the ultimate disposal thereof upon order of the trial court. This approach was a true recognition of the value as evidence of guilt of the seized illegal substances themselves - which are no less the *corpus delicti* in the drug-related offenses of illegal sale and illegal possession so essential to the conviction and incarceration of the offenders.

Inasmuch as the dangerous drug itself constitutes the *corpus delicti* of the offense charged, its identity and integrity must be shown by the State to have been preserved. On top of the elements for proving the offense of illegal possession, therefore, is that the substance possessed is the very substance presented in court. The State must establish this element with the same exacting degree of certitude as that required for ultimately handing down a criminal conviction.^[10] To achieve this degree of certitude, the Prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of the *corpus delicti*. The process, though tedious, must be undergone, for the end is always worthwhile - the preservation of the chain of custody that will prevent unnecessary doubts about the identity of the evidence.

In particular, the *Comprehensive Dangerous Drugs Act of 2002* has incorporated affirmative safeguards that the apprehending officers should faithfully comply with in their seizure and custody of dangerous drugs, *viz.:*

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 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;

x x x x

Complementing this provision is Section 21(a) of Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, to wit:

x x x x

(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;

x x x x

As the law stands, there can be no avoidance of the responsibility to comply on the part of the arresting officers.

A careful review of the records reveals that the police operatives did not faithfully follow the affirmative safeguards. For one, although the safeguards required a physical inventory and photographing of the *shabu* immediately upon seizure and confiscation "in the presence of the accused x x x, 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," there was no showing why no such inventory and photographing of the *shabu* had been made by the arresting team. It is true that under the guidelines they could have also made the inventory and photographing at the police station by virtue of the confiscation having been *in flagrante delicto*. Yet, they also did not make any inventory or take any photographs at the police station. And, secondly, it was not also established that any of the police operatives had marked the seized *shabu* at the crime scene and in the presence of the petitioner, a representative of the media, a representative of the DOJ, and any elected official, as similarly required. In this regard, PO1 Madlangbayan identified the *shabu* in court through the markings "LCP-1" and "LCP-2" (which were the initials of the petitioner),^[11] but there was no testimony by him or any other about the specific circumstances of the placing of such markings, such as the time when and the place where the markings were actually made.

The lack of the inventory signed by the petitioner himself or by his representative as well as by the representative of the media and the DOJ and/or the elected official as *required by law* could very well be held to and/or the elected official as *required by law* could very well be held to mean that no *shabu* had been seized from the petitioner on that occasion. Also, the lack of testimony by PO1 Madlangbayan on when and where he had placed the markings "LCP-1" and "LCP-2" on the sachets of *shabu* sidelined the safeguards. Despite the blatant lapses in the compliance with the statutory safeguards, the records do not contain any explanation offered by the State for the lapses. The non-compliance with the affirmative safeguards thus rendered the evidence of the *corpus delicti* open to doubt.

The CA observed in its assailed decision that the *shabu* had been properly preserved by the police operatives, and further noted the fact that the plastic sachet containing the *shabu* had been examined as to its contents which were later on presented in court.^[12] However, the observations by the CA did not abate the doubts surrounding the conviction of the petitioner. We should insist that the members of the arresting and seizing team should have themselves rendered the explanation for the lapses thus noted. No one else could have done so. In fact, neither the RTC nor the CA could assume the responsibility of explaining the lapses, even by inference from the record, for their doing so would slacken the safeguards and tolerate the non compliance by the arresting lawmen at the time of the seizure. We should emphatically remember that the particular safeguard requiring the presence of the media and DOJ

representatives, or the presence of the elected official, being designed to insulate the arrest of the violator and the seizure of the drug from suspicion,^[13] could be complied with only prior to or simultaneously with the arrest of the suspect and confiscation of the contraband. Moreover, the requirement for marking of the *shabu* to be made *at or nearest to the time of the seizure* would at least guarantee that the identity of the substance be preserved despite its movement from one hand to the next in the chain of custody starting from the seizure until disposal by order of the trial court.^[14]

The significance of preserving the integrity of the chain of custody for the dangerous drugs confiscated cannot ever be understated. The Dangerous Drugs Board (DDB) dutifully promulgated a formal rule to preserve the chain of custody in DDB Regulation No. 1, Series of 2002, and stated in Section 1 (b) thereof:

- b. **"Chain of Custody" means 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 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;**

The Court has already recognized that strict adherence to the rule on chain of custody was almost always impossible to do.^[15] Strict adherence is not always expected, therefore, as borne out by the saving declaration in the last paragraph of Section 21 (a) of the IRR to the effect that the seizure and custody of the dangerous substances should not be rendered void or invalid by the non-compliance with the requirements under justifiable grounds for as long as the integrity and evidentiary value of the seized items are preserved by the apprehending officers.^[16] But such saving declaration did not come into play herein because, *one*, the seizing officers did not tender their justification for the lapses committed;^[17] and, *two*, there was really no showing by the State that the integrity and evidentiary value of the *shabu* had been properly preserved.

To stress, the obligation to tender the credible explanation for any non-compliance with the affirmative safeguards imposed by Section 21 of the *Comprehensive Dangerous Drugs Act of 2002* pertained to the State,^[18] and its agents, and to no other. If the State and its agents do not discharge such obligation, then the evidence of guilt necessarily becomes suspect.

In light of the foregoing, the State did not establish the petitioner's guilt beyond reasonable doubt. How can there be any moral certainty of his guilt as having illegally possessed the *shabu* presented at the trial if there were lapses in the observance of the affirmative safeguards? In view of the suspicion infecting the evidence of guilt, his defense of not having been the focus of the operation by the police officers when he first encountered them that evening gains ground. As a result, his version of being apprehended only on his return from the off-track betting station cannot be discounted or dismissed as implausible. Therein lies the reasonable doubt of his guilt.

It is quite notable that the CA relied too much on the presumption of regularity in the performance of official duties on the part of the arresting officers. Such reliance was premised on the failure of the petitioner during the trial to impute any ill motive against them for arresting and incriminating him. In our view, however, such reliance was legally unwarranted. To begin with, the presumption of regularity in the performance of official duties should not even be relied upon because there was concrete and undeniable evidence of lapses committed by the arresting officers in their compliance with the affirmative safeguards. The presumption has been erected only for convenience, to excuse the State from the duty to adduce proof that official duties have been regularly performed by its agents, because of the physically

impossible or time-consuming task of detailing all the steps establishing the regular performance of official duties. Moreover, it would be unconstitutional to place a higher value in the presumption of regularity in the performance of official duties - a mere tool of evidence - than in the more substantial presumption of innocence favoring the petitioner as an accused - a right enshrined no less than in the Bill of Rights. Preferring the former would ignore the experience in the streets that actually bears witness to so many illegal arrests and unreasonable incriminations of the innocent. In *People v. Andaya*, [19] therefore, we have precisely warned against judicially pronouncing guilty the person arrested by law enforcers just because he could not impute any ill motives to them for arresting him, and have cautioned against presuming the regularity of the arrest on that basis alone, stating:

x x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. The State must fully establish that for us. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.

The criminal accusation against a person must be substantiated by proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on March 30, 2007 affirming the decision of the Regional Trial Court, Branch 214, in Mandaluyong City finding and declaring petitioner Leonardo P. Casona guilty of a violation of Section 11, Article II of Republic Act No. 9165 as charged in the information; and **ACQUITTS** him for failure of the State to establish his guilt beyond reasonable doubt.

SO ORDERED.

Velasco, Jr., Leonen, Martires, and Gesmundo, JJ., concur.

October 9, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **September 13, 2017** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 9, 2017 at 1:30 p.m.

Very truly yours,

(SGD)
**WILFREDO V.
LAPITAN**

Division Clerk of Court

ORDER OF RELEASE

TO: The Director

Bureau of Corrections
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on **September 13, 2017** promulgated a **Decision** in the above-entitled case, the dispositive portion of which reads:

"**WHEREFORE**, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on March 30, 2017 affirming the decision of the Regional Trial Court, Branch 214, in Mandaluyong City finding and declaring petitioner Leonardo P. Casona guilty of a violation of Section 11, Article II of Republic Act No. 9165 as charged in the information; and **ACQUITTS** him for failure of the State to establish his guilt beyond reasonable doubt.

SO ORDERED."

NOW, THEREFORE, You are hereby ordered to immediately release **LEONARDO P. CASONA** unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **PRESBITERO J. VELASCO, JR.**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **13th** day of **September 2017**.

Very truly yours,

(SGD)
**WILFREDO V.
LAPITAN**

Division Clerk of Court

[1] *Rollo*, pp. 70-84; penned by Associate Justice Enrico A. Lanzanas, with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Rosalinda Asuncion-Vicente concurring.

[2] Id. at 39-41; penned by Judge Edwin D. Sorongan.

[3] Id. at 39.

[4] Id. at 71-72.

[5] Id. at 12-13.

[6] Id. at 41.

[7] Id. at 83-84.

[8] Id. at 15.

[9] Section 2, Rule 133 of the *Rules of Court*.

[10] *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 697.

[11] *Rollo*, p. 119.

[12] Id. at 82.

[13] *People v. Mendoza*, G.R. No. 192432, June 23, 2014, 727 SCRA 113, 126.

[14] *Reyes v. Court of Appeals*, G.R. No. 180177, April 18, 2012, 670 SCRA 148, 163.

[15] *People v. Angngao*, G.R. No. 189296, March 11, 2015, 752 SCRA 531, 543.

[16] Id. at 543-544.

[17] *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 329.

[18] *People v. Barte*, G.R. No. 179749, March 1, 2017.

[19] G.R. No. 183700, October 13, 2014, 738 SCRA 105, 118-119.