

FIRST DIVISION

[G.R. No. 181042, November 26, 2012]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMIN ZAKARIA Y MAKASULAY AND JOANA ZAKARIA Y SILUNGAN, ACCUSED. SAMIN ZAKARIA Y MAKASULAY, ACCUSED - APPELLANT.

D E C I S I O N

BERSAMIN, J.:

Statutory rules on preserving the chain of custody of confiscated prohibited drugs and related items are designed to ensure the integrity and reliability of the evidence to be presented against the accused. Their observance is the key to the successful prosecution of illegal possession or illegal sale of dangerous drugs.^[1]

On appeal is the decision promulgated on April 11, 2007,^[2] whereby the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 01781,^[3] affirmed the conviction of both accused for violation of Section 5 of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) the Regional Trial Court (RTC), Branch 154, in Pasig City handed down through its decision rendered on August 26, 2005.^[4]

Antecedents

The following information charged the two accused as follows:

On or about January 7, 2005, in Taguig, Metro Manila, and within the jurisdiction of this Honorable Court, the above-accused, in conspiracy with one another, not being lawfully authorized, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Luisito L. Aninias, a police poseur buyer, three (3) pieces heat-sealed transparent plastic sachet bag containing the following:

- a) (EXH "A-1") – 4.84 grams
- b) (EXH "A-2") – 4.73 grams
- c) (EXH "A-3") – 24.66 grams

with a total weight of thirty four point twenty three (34.23 grams) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride (*shabu*), a dangerous drug, in violation of the said law.

Contrary to Law.^[5]

On January 27, 2005, each of the accused pleaded *not guilty*.^[6]

During the pre-trial, the Prosecution dispensed with the testimony of Forensic Chemist Donna Villa P. Huelgas after the accused admitted the existence of the Forensic Chemist Report.^[7]

At the trial, the State presented only two witnesses, namely: PO2 Luisito Aninias and PO3 Ronald Valdez; while the Defense had only the accused themselves as its witnesses.

Version of the Prosecution

PO2 Aninias declared that at about 1:00 p.m. on January 6, 2005, a confidential informant went to the CALABARZON Regional Office of the Philippine Drug Enforcement Agency (PDEA) in Camp Vicente Lim in Calamba, Laguna and informed Chief Supt. Abe Lemos that he had entered into a drug deal for 35 grams of *shabu* worth P98,000.00 with *alias* Danny and *alias* Joana to take place at 287 Tamayo Compound on Caliraya Drive, in Taguig City.^[8] Thereafter, Chief Supt. Lemos tasked Insp. Julius Ceasar Ablang to form a team for a buy-bust operation. The team was made up of PO2 Aninias as poseur-buyer, and SPO2 Gerry Abalos, SPO1 Miguel Lapitan, SPO1 Norman Jesus Platon, PO3 Ronald Valdez, PO3 Sherwin Bulan, and PO3 Danilo Leona as the other team members.^[9] Insp. Ablang gave a P500.00 bill to PO2 Aninias to serve as the buy-bust money. PO2 Aninias wrote his initials “*LLA*” on the P500.00 bill,^[10] and then placed the marked bill on the bundle of boodle money that seemingly amounted to P98,000.00. He put the boodle money in a white window envelope.^[11]

At about 3:00 p.m. of January 6, 2005, PO2 Aninias, PO3 Valdez and the confidential informant surveyed the target area in order to confirm if drug activities were taking place there. PO2 Aninias observed there about ten persons going in and out of the target area. The persons were thin and looked haggard, and had deep set eyes and protruding cheeks. About 30 minutes later, PO2 Aninias and his companions left the target area and returned to the Regional Office to report their observations.^[12]

In the morning of January 7, 2005, the confidential informant contacted Danny to tell him that he had a buyer. They agreed to have the deal at the target area.^[13] Insp. Ablang prepared a pre-operation report,^[14] and coordinated with the PDEA National Office.^[15]

Using a Toyota Revo and a Mitsubishi Adventure, the buy-bust team arrived at the target area at around 1:45 p.m. of January 7, 2005. PO2 Aninias drove the Revo, with the confidential informant on board. The rest of the team rode on the Adventure. PO2 Aninias parked the Revo some 10 meters away from the target area, while the other driver parked the Adventure about 50 meters from the Revo. The confidential informant then called Danny and told him that he and the buyer were already in the vicinity, but Danny advised them to wait for the *shabu* to be prepared. At about 2:00 p.m., PO2 Aninias moved the Revo closer to the target area. Not long after, Danny arrived. The confidential informant, whom Danny personally knew, motioned to Danny to get on board the Revo. Once Danny got in the Revo, the confidential informant introduced PO2 Aninias to Danny as the buyer of *shabu*. Danny asked PO2 Aninias about the money. PO2 Aninias showed to Danny the white window envelope containing the P500.00 bill and boodle money. Saying that the *shabu* was with his wife, Danny then got out of the Revo to fetch her.^[16]

After nearly 15 minutes, Danny returned with a woman. The confidential informant requested the two to board the Revo. Danny introduced the woman to PO2 Aninias as his wife Joana. Danny again asked for the money. PO2 Aninias once more flashed the white window envelope to Danny and asked to see the *shabu*. Danny pulled three sachets containing white crystalline substance from his pocket and handed the sachets to PO2 Aninias, who turned over the white window envelope to Joana and forthwith made a missed call to PO3 Valdez. The missed call was the pre-arranged signal indicating that the transaction was consummated. As Danny was about to count the money in the envelope, PO2 Aninias drew and pointed his gun at Danny and Joana. The rest of the team, who had meanwhile rushed towards the Revo as soon as PO3 Valdez received PO2 Aninias’ missed call, quickly arrested the two suspects.

PO2 Aninias immediately placed his initials on the three sachets received from Danny, while

PO3 Valdez recovered the boodle money from Joana.^[17] The team then brought Danny and Joana to Camp Vicente Lim for investigation.^[18] Danny was identified as Samin Zakaria y Makasulay and Joana as Joana Zakaria y Silungan.

Bearing the Request for a Laboratory Examination prepared by Chief Supt. Lemos,^[19] PO2 Aninias turned over the seized sachets and their contents to the PNP Regional Crime Laboratory, where Forensic Chemist Sr. Insp. Donna Villa Huelgas conducted qualitative and quantitative examinations on the contents. The examinations yielded positive results for the presence of methylamphetamine hydrochloride, a dangerous drug. Forensic Chemist Huelgas issued Chemistry Report No. D-0031-05 dated January 8, 2005,^[20] as follows:

SPECIMEN SUBMITTED:

Three (3) heat-sealed transparent plastic sachets, each containing white crystalline substance with the following markings (with signature) and net weights:

A (EXH "A-1" LLA 07 Jan '05) – 4.84 grams
B (EXH "A-2" LLA 07 Jan '05) – 4.73 grams
C (EXH "A-3" LLA 07 Jan '05) – 24.66 grams

x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drug/s on the above-mentioned specimen

x x x x

FINDINGS:

Qualitative examination conducted on specimen A,B and C gave POSITIVE result to the tests for the presence of Methamphetamine Hydrochloride, a dangerous drug.^[21]

x x x x

A certificate of inventory^[22] was issued by the PDEA Regional Office and was signed by Insp. Ablang, Bell Desolo of Abante-Tonite, and Victor Penid, an official of Barangay Mapayapa.

PO3 Valdez corroborated PO2 Aninias' account of the conduct of the surveillance and buy-bust operation. PO3 Valdez said that during the operation he received the missed call from PO2 Aninias and immediately rushed towards the Revo to assist in the arrest of the two suspects.^[23] He attested that he recovered the marked money from Joana.^[24]

Version of the Defense

The Defense gave a different story.

Joana said that at about 12:00 noon on January 7, 2005, she left to fetch her five-year old child, Jornea, from school on board a tricycle;^[25] that on her return home with her child at around 1:00 p.m., she immediately noticed that the door to their house had been detached and that at least eight men in civilian clothes were inside their house;^[26] that she saw Samin, her husband, lying face down on the floor of their bedroom, and one of the men was stepping on her husband's head;^[27] that Samin's cousins, Benson Pam and Saudi, were in the sala, also

lying face down on the floor about three meters from where her husband was;^[28] that the men brought the couple to Camp Vicente Lim; that on the way to Camp Vicente Lim on board a white Revo driven by PO2 Aninias, PO3 Valdez demanded P100,000.00 in exchange for their release;^[29] and that she answered that they could not give P100,000.00 because they did not have money due to her husband being only a tricycle driver.^[30]

Joana recalled that she and her husband were detained for a while in a small room in Camp Vicente Lim before being shown by PO2 Aninias plastic sachets containing *shabu* that had been supposedly recovered from them; and that she protested and argued that they were not selling *shabu*.^[31]

Samin corroborated Joana's recollection. He stated that on January 7, 2005, he and his cousins, Saudi and Benson Pam, went to worship in the mosque and returned to his house at around 12:50 p.m. to rest;^[32] that while he was resting in the bedroom, two men in civilian attire barged in and ordered him to lie face down on the floor; that one of them put his foot on his nape;^[33] and that he came to know later on that his cousins, who were themselves resting in the sala, had also been ordered to lie face down by other men who had entered his house.^[34]

Samin asserted that he saw the sachets of *shabu* for the first time only when PO2 Aninias showed them to him in Camp Vicente Lim;^[35] and that one of the men whom he could no longer identify demanded P100,000.00 as settlement of the case against them.^[36]

On August 26, 2005, the RTC convicted both accused, disposing thus:

WHEREFORE, premises considered, judgment is hereby rendered finding both the accused SAMIN ZAKARIA y Makasulay and his wife JOANA ZAKARIA y Silungan GUILTY beyond reasonable doubt of violation of Section 5 of R.A. 9165 (illegal sale of dangerous drugs) and they are hereby sentenced to suffer the penalty of LIFE IMPRISONMENT. Each of them is also ordered to pay a fine of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

The illegal substance subject of the information is directed to be delivered forthwith to the PDEA for its immediate disposition.

Considering the penalty imposed by the Court, the commitment of the accused Samin Zakaria and Joana Zakaria to the New Bilibid Prison and Correctional Institution for Women, respectively, is ordered.

SO ORDERED.^[37]

On appeal, the accused assigned the following errors, to wit:

I. The trial court committed grave error in considering that the group of PO2 Aninias who are assigned at the Philippine Drug Agency, Regional Office, Calabarzon Camp Vicente Lim failed to observed (sic) strictly the provision of RA 9165 - the procedure in the obtaining seized prohibited and regulated drugs.

II. The trial court gravely erred in disregarding the fact that police officers merely informed the accused of their constitutional rights only without elaborating what are their constitutional rights.

III. The trial court gravely erred in not considering that minor inconsistencies of

accused do not affect their credibility.^[38]

On April 11, 2007, the CA affirmed the conviction, *viz*:

After carefully going over the evidence on record, we find absolutely no reason to disturb the findings of the trial court and its decision finding both accused guilty beyond reasonable doubt of the offense as charged in the information.

WHEREFORE, the decision appealed from is hereby AFFIRMED in toto.

SO ORDERED.^[39]

Only Samin filed a timely notice of appeal,^[40] resulting in the decision of the CA becoming final and executory as to Joana. The CA issued a partial entry of judgment on May 11, 2007.^[41]

Issues

Samin insists that the members of the buy-bust team did not fully explain to him his constitutional rights; that the State did not establish the origin of the seized dangerous drugs and did not prove that the chain of custody had been observed; and that his guilt was not established beyond reasonable doubt.

The State, through the Office of the Solicitor General (OSG), counters that Samin was properly convicted because his guilt for the crime charged was sufficiently established; that the State proved the identities of the sellers and the buyer, the object and the consideration; that the State further proved the delivery of the *shabu* and the payment for the *shabu*; that there was no doubt that the sachets of *shabu* came from Samin and Joana, considering that PO2 Aninias proved that the *shabu* had not been planted but had been in the possession of the accused at the time of the buy-bust operation; that PO2 Aninias marked the confiscated items, prepared the certificate of inventory, and personally brought the *shabu* to the Regional Crime Laboratory with the request for examination; that the chain of custody was not broken; that the supposed failure to inform the accused of their constitutional rights was immaterial considering that no admission or confession had been taken from them; and that the credibility of the Defense witnesses was best addressed by the RTC as the trial court, which found that their inconsistencies affected their credibility because they concerned material points.

Ruling

The appeal is meritorious.

In every prosecution for the illegal sale of dangerous drugs, the presentation of the seized dangerous drugs as evidence in court is indispensable.^[42] It is essential that the identity of the dangerous drugs be established beyond doubt. What is more, the fact that the dangerous drugs bought during the buy-bust operation are the same dangerous drugs offered in court should be established. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.^[43]

Moreover, to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt, the State bears the burden of proving the *corpus delicti*, or the body of the crime. The Prosecution does not comply with the indispensable requirement of proving the *corpus delicti* either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence

ultimately presented in court.^[44] That proof of the *corpus delicti* depends on a gapless showing of the chain of custody. As the Court has pointed out in *People v. Belocura*:^[45]

xxx. The chain-of-custody requirement applied xxx by virtue of the universal need to competently and sufficiently establish the *corpus delicti*. It is basic under the *Rules of Court*, indeed, that evidence, to be relevant, must throw light upon, or have a logical relation to, the facts in issue to be established by one party or disproved by the other.^[46] The test of relevancy is whether an item of evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it would reasonably and actually tend to prove or disprove any matter of fact in issue, or corroborate other relevant evidence. The test is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved.^[47]

To ensure the establishment of the chain of custody, Section 21 (1) of Republic Act No. 9165 provides:

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.

x x x x

Section 21 (a) of Article II, the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, states:

x x x x

(a) The apprehending office/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

Crucial in proving the chain of custody is the marking of the seized dangerous drugs or other related items immediately after they are seized from the accused, for the marking upon seizure is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. Moreover, the value of marking of the evidence is to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, “planting” or contamination of evidence.^[48] A failure to mark at the time of taking of initial custody imperils the integrity of the chain of custody that the law requires.

The records show that the buy-bust team did not observe the mandatory procedures under Republic Act No. 9165 and its IRR. Although PO2 Aninias supposedly marked the confiscated *shabu* with his initials immediately upon seizure, he did not do so in the presence of the accused or of their representatives and any representative from the media and Department of Justice (DOJ), or any elected public official. If he had, he would have readily stated so in court. In fact, both PO2 Aninias and PO3 Valdez themselves revealed that no media or DOJ representative, or elected public official was present during the buy-bust operation and at the time of the recovery of the evidence at the target area. Instead, the media were only around in the PDEA regional headquarters.^[49]

The certificate of inventory, although signed by a media representative and a *barangay* official,^[50] was nonetheless discredited by PO2 Aninias’ admission that only the confidential informant and the members of the buy-bust team were present at the time of the recovery of the sachets of *shabu* from Samin. Verily, although PO2 Aninias declared having personally seen the media representative and the *barangay* official affixing their signatures on the certificate of inventory, he gave no indication at all that the certificate had been signed in the presence of the accused or of their representative.

Another serious lapse committed was that the buy-bust team did not take any photographs of the sachets of *shabu* upon their seizure. The photographs were intended by the law as another means to confirm the chain of custody of the dangerous drugs.

The last paragraph of Section 21 (a) of the IRR, *supra*, contains a saving proviso to the effect 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.” But in order for the saving proviso to apply, the Prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting lawmen.^[51] That did not happen here, because the Prosecution neither recognized nor explained the lapses. Even conceding, for instance, that the PDEA Regional Office contacted and informed the media about the buy-bust operation, we wonder why the media representative or the *barangay* official did not witness the actual marking of the evidence and why the representative and *barangay* official signed the certificate of inventory sans the presence of the accused or his representatives. In that respect, the Prosecution offered no explanation at all.

Even if we are now to disregard the frame-up defense of Samin, the Prosecution’s failure to recognize and to explain to the trial court the non-compliance by the buy-bust team with the requirements for preserving the chain of custody left the identity of the *shabu* ultimately presented as evidence in court suspect and ambiguous. The suspiciousness and ambiguity irreparably broke the chain of custody required under Republic Act No. 9165, which was fatal to the cause of the Prosecution. Indeed, the chain of custody was crucial in establishing the link between the *shabu* confiscated from the accused and the evidence presented to the court for its

appreciation. The Court has pointed out in *Malillin v. People*:

As a method of authenticating evidence, 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 the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Under the circumstances, the *corpus delicti* was not credibly proved because the Prosecution did not establish an unbroken chain of custody, resulting in rendering the seizure and confiscation of the *shabu* open to doubt and suspicion. Hence, the incriminatory evidence should not pass judicial scrutiny.^[53]

WHEREFORE, the Court **SETS ASIDE** the decision of the Court of Appeals promulgated on April 11, 2007; **ACQUITTS** accused **SAMIN ZAKARIA y MAKASULAY** of the violation of Section 5 of Republic Act No. 9165 charged in the information; **DIRECTS** the immediate release from detention of accused **SAMIN ZAKARIA y MAKASULAY**, unless he is also detained for some other lawful cause; and **ORDERS** the Director of the Bureau of Corrections to implement this decision and to report his action hereon to this Court within ten days from receipt hereof. No pronouncements on costs of suit.

SO ORDERED.

*Sereno, C.J., Leonardo-De Castro, Villarama, Jr., and Perez, * JJ., concur.*

* Vice Associate Justice Bienvenido L. Reyes, who is on Wellness Leave, per Special Order No. 1356 dated November 13, 2012.

[1] *People v. Relato*, G.R. No. 173794, January 18, 2012, 663 SCRA 260, 262.

[2] *Rollo*, pp. 2-24; penned by Associate Justice Monina Arevalo-Zenarosa (retired) and concurred in by Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Edgardo F. Sundiam (deceased).

[3] Entitled *People v. Samin Zakaria y Makasulay and Joana Zakaria y Silungan*.

[4] Original Records, pp. 91-100.

[5] Id. at 1-2.

[6] Id. at 24-26

[7] Id. at 29.

[8] TSN of March 3, 2005, pp. 2-3.

[9] Id. at 4.

[10] Id. at 4-5.

[11] Id. at 4.

[12] Id. at 6-7.

[13] Id. at 8.

[14] Original Records, p. 20.

[15] TSN of March 3, 2005, p. 11.

[16] Id. at 11-14.

[17] Id. at 14-16.

[18] Id. at 17.

[19] Original Records, p. 13.

[20] Id. at 14.

[21] Id.

[22] Id. at 17.

[23] TSN of June 20, 2005, p. 6.

[24] Id. at 7.

[25] TSN of June 27, 2005, pp. 3, 8.

[26] Id. at 11-12, 14.

[27] Id. at 13-14.

[28] Id. at 12.

[29] Id. at 18-20.

[30] Id. at 21.

[31] Id. at 6-7.

[32] TSN of July 4, 2005, pp. 3, 7-8.

[33] Id. at 11-16.

[34] Id. at 18.

[35] Id. at 7.

[36] Id. at 26.

[37] Original Records, p. 100.

[38] CA *rollo*, pp. 45-46.

[39] Id. at 136.

[40] Id. at 146.

[41] Id. at 147.

[42] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718.

[43] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[44] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

[45] G.R. No. 173474, August 29, 2012.

[46] Id., citing Section 3 and Section 4, Rule 128, Rules of Court.

[47] Id., citing 31A CJS, Evidence, §199.

[48] *People v. Coreche*, supra note 43, at 357.

[49] TSN of May 30, 2005, p.11.

[50] Original Records, p. 17.

[51] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 270.

[52] Supra, note 42, pp. 632-633.

[53] *People v. Belocura*, supra, note 44.

