

# THIRD DIVISION

[ G.R. No. 256839, February 22, 2023 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BOBBY LOPINA Y LABESTRE ALIAS "BAROK," ACCUSED-APPELLANT.**

## DECISION

INTING, J.:

Before the Court is an ordinary appeal<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated July 7, 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02948. The CA dismissed the appeal filed by Bobby Lopina y Labestre (accused-appellant) and affirmed the Decision<sup>[3]</sup> dated January 5, 2018, of Branch 25, Regional Trial Court (RTC), Iloilo City, in Criminal Case No. 09-67774 that found him guilty beyond reasonable doubt of violation of Section 6,<sup>[4]</sup> Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

### *The Antecedents*

The instant case stemmed from an Information dated November 23, 2015, charging accused-appellant with violation of Section 6, Article II of RA 9165, the accusatory portion of which states:

That on or about the 12th day of September 2009 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused with deliberate intent and without any justifiable motive, did then and there willfully, knowingly, unlawfully and criminally maintain and utilize his residential house located at Punta Dike, Brgy. Bakhaw, Mandurriao, Iloilo City, as a drug den where, methamphetamine hydrochloride (shabu), a dangerous drug, is being administered, delivered and stored for illegal purposes, and/or used thereat, without having the necessary permit or authority to do so.

CONTRARY TO LAW.<sup>[5]</sup>

Upon arraignment on October 21, 2009, accused-appellant pleaded "not guilty" to the offense charged.<sup>[6]</sup>

Trial ensued.

### *Version of the Prosecution*

The prosecution established that on September 7, 2009, at around 9:00 a.m., Investigation Agent 1 Paul D. Ledesma (IA1 Ledesma) of the Philippine Drug Enforcement Agency (PDEA), Region VI, received a tip from a confidential informant that accused-appellant was engaged in selling *shabu* in Barangay Bakhaw, Mandurriao, Iloilo City. That afternoon, Investigation Officer 2 Gelly Robins G. Cataluña (IO2 Cataluña) and IO1 Guilbert Sumalangcay (IO1 Sumalangcay)<sup>[7]</sup> conducted a surveillance operation at accused-appellant's house. At the target area, they observed that several suspected drug pushers and drug users went in and out of the house. Thus, IA1 Ledesma ordered IO2 Cataluña and IO1 Sumalangcay to conduct a "test-buy" the following day.<sup>[8]</sup>

On September 8, 2009, IO2 Cataluña, with the assistance of the informant, was able to purchase from accused-appellant at his house P600.00 worth of *shabu* during the "test-buy."<sup>[9]</sup>

On September 11, 2009, the PDEA agents applied for a search warrant, which Judge Ma. Elena Opinion (Judge Opinion) granted. Hence, Judge Opinion issued Search Warrant No. 53-2009 authorizing the search on the residence of accused-appellant for an "undetermined volume of *shabu* and drug paraphernalia."<sup>[10]</sup>

On September 12, 2009, at around 3:00 p.m., the PDEA team arrived at accused-appellant's house to implement the search warrant. Outside the fence, IO2 Cataluña called out to the occupants of the house informing them that they were members of the PDEA and that they would be implementing a search warrant. Upon hearing the warning, the occupants of the house scrambled out of the second floor to evade the PDEA agents. When they saw the occupants running, IO2 Cataluña and IO1 Sumalangcay forced open the bamboo fence. IO2 Cataluña ran after accused-appellant, who was running to the back of his house. In no time, IO2 Cataluña apprehended and handcuffed accused-appellant. The PDEA team also apprehended four other occupants of the house.<sup>[11]</sup>

After about 15 minutes, Barangay Captain Ruby Gallano (Barangay Captain Gallano) and Barangay *Kagawad* Eduardo Alegrada (*Kagawad* Alegrada) arrived. Then, IA1 Ledesma read the search warrant to accused-appellant. Immediately, IO1 Daisy Sabanal (IO1 Sabanal) and IO1 Maria Melinda Panaguiton (IO1 Panaguiton) began their search on the second floor of the house. There, they were able to find two pieces of crumpled aluminum foil with suspected *shabu* residue, as well as several lighters.<sup>[12]</sup>

IO1 Sabanal and IO1 Panaguiton, together with accused-appellant and Barangay Captain Gallano, proceeded to the first floor. There, the PDEA team found 21 plastic sachets containing suspected *shabu* weighing a total of 0.25 gram in one of the drawers.<sup>[13]</sup> They also found a .38 caliber revolver with live ammunition, more lighters, an aluminum foil with suspected *shabu* residue, a *pipa*, bamboo sticks (used in sealing plastic sachets), and empty plastic wrappers with suspected *shabu* residue.<sup>[14]</sup>

Meanwhile, Julius Padilla (Padilla), a representative from the media, and Prosecutor Raymond Joseph Javier (Atty. Javier), a representative from the Department of Justice (DOJ), arrived. After the search, IO1 Panaguiton marked the seized items, while IO1 Sabanal conducted the inventory in the presence of accused-appellant, Atty. Javier, Padilla, Barangay Captain Gallano, and *Kagawad* Alegrada. Then, IO1 Sabanal prepared a Receipt of Inventory of Property Seized which Padilla, Barangay Captain Gallano, and *Kagawad* Alegrada signed. However, accused-appellant refused to sign the receipt. IO1 Panaguiton also prepared a Certificate of Inventory. Again, accused-appellant refused to sign the certificate.<sup>[15]</sup>

After the marking and inventory, the PDEA team arrested accused-appellant for the crime of Maintenance of a Drug Den. They apprised him of his rights. Then the PDEA team and accused-appellant proceeded to the nearest police station.<sup>[16]</sup> Because it was a Saturday, the PDEA team could not make a return of the search warrant to the issuing court. Thereafter, IO1 Sabanal turned over the seized items to IO1 Panaguiton, the evidence custodian at the PDEA Regional Office.<sup>[17]</sup>

On September 14, 2009, a Monday, the PDEA agents appeared before Judge Opinion to file the Return of Search Warrant. IO1 Sabanal and IO1 Panaguiton brought the seized items to the PNP Crime Laboratory which, after a laboratory examination, proved and tested positive for methamphetamine hydrochloride or *shabu*.<sup>[18]</sup>

In his defense, accused-appellant argued that in the afternoon of September 12, 2009, while he was in his backyard cleaning pig pens, someone forcibly kicked the door of his house. His nephew, Ryan Celiz (Ryan), was inside the house with his friends Arnel Alcabaza, Merwin Granzon, and Rey Juanico, Jr., when several men forcibly entered and ordered them to lie down on the floor. They handcuffed and dragged Ryan and his friends outside of the house.<sup>[19]</sup>

Accused-appellant further argued that while he was at his backyard, a man arrived and pointed a gun at him. Then, the man kicked and handcuffed him for no reason at all. The man, later identified as a PDEA agent, then brought him to the front of his house where his nephew and the latter's friends were also handcuffed.<sup>[20]</sup>

After 30 minutes, the barangay officials arrived. It was only at this time that the PDEA team brought him back inside the house to accompany them in searching the premises. After the search, the PDEA team presented to him items purportedly found inside his house. He refused to sign the document presented to him because the items did not belong to him. Afterwards, they brought him to the police station.<sup>[21]</sup>

### *Ruling of the RTC*

In the Decision<sup>[22]</sup> dated January 5, 2018, the RTC convicted accused-appellant of the offense of Maintenance of a Drug Den, in violation of Section 6 of RA 9165. It sentenced him to suffer the penalty of life imprisonment and ordered him to pay a fine of P500,000.00.<sup>[23]</sup>

The RTC gave full credence to the testimonies of the prosecution witnesses. It ruled that the prosecution proved all the elements of Maintenance of a Drug Den. Moreover, it found that the integrity and evidentiary value of the seized items were duly preserved.<sup>[24]</sup>

Aggrieved, accused-appellant appealed to the CA.

### *The CA Ruling*

In the assailed Decision,<sup>[25]</sup> the CA affirmed the RTC Decision convicting accused-appellant of violation of Section 6 of RA 9165.

The CA upheld the validity of the search warrant. It likewise ruled that all the elements of Maintenance of a Drug Den were duly established. In addition, it agreed with the RTC that there was an unbroken chain of custody of the seized items based on the testimony of the prosecution witnesses.<sup>[26]</sup>

Hence, the instant appeal.<sup>[27]</sup>

Accused-appellant manifested that he no longer intends to file a Supplemental Brief as he adopts the contents of the Appellant's Brief he filed before the CA.<sup>[28]</sup> Likewise, the Office of the Solicitor General (OSG), in behalf of the People, manifested that it is adopting the Appellee's Brief it filed before the CA.<sup>[29]</sup>

### *The Issue*

Whether the CA correctly affirmed the RTC's conviction of accused-appellant for the offense of Maintenance of a Drug Den, in violation of Section 6 Article II of RA 9165.

### *The Court's Ruling*

The appeal is meritorious.

To begin with, it must be emphasized that an appeal opens an entire criminal case to review, and the reviewing tribunal has the duty "to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned."<sup>[30]</sup> The appellate court is conferred full jurisdiction over the case and is rendered competent "to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."<sup>[31]</sup>

For an accused to be convicted of the offense of Maintenance of a Drug Den under Section 6 of RA 9165, the prosecution must prove beyond reasonable doubt that he or she is "maintaining a den" where any dangerous drug is administered, used, or sold.<sup>[32]</sup> Hence, to sustain the conviction of Maintenance of a Drug Den, the prosecution must prove the following elements: (a) that the place is a den—a place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form; and (b) that the accused maintains the said place.<sup>[33]</sup>

Here, the prosecution failed to establish beyond reasonable doubt that accused-appellant is maintaining a drug den.

The evidence relied upon by the RTC in convicting the accused appellant of Maintenance of a Drug Den substantially consists of the following: (1) the result of the test-buy allegedly conducted by the PDEA agents four days prior to the implementation of the search warrant;<sup>[34]</sup> and (2) the drug paraphernalia and plastic sachets containing *shabu* allegedly found inside accused-appellant's house.<sup>[35]</sup>

In *People v. Andanar and Garbo (Andanar)*,<sup>[36]</sup> the Court acquitted Mary Jane Garbo for failure of the prosecution to establish that she was maintaining a drug den or that her house was used as a place where dangerous drugs were "regularly" sold to and/or used by customers, thus:

First, a drug den is a lair or hideaway where prohibited or regulated drugs are used in any form or are found. Its existence may be proved not only by direct evidence but may also be established by proof of facts and circumstances, including evidence of the general reputation of the house, or its general reputation among police officers.

*People v. Galicia* ordained that the prosecution must establish that the alleged drug den is a place where dangerous drugs are regularly sold to and/or used by customers of the maintainer of the den. The word "regular" means doing the same thing in uniform intervals, or something that is a common occurrence.

Here, PO2 Antillon, Jr. testified that Garbo invited him inside her house where the sale of illegal drugs between him and Andanar took place. Thereafter, Garbo offered PO2 Antillon, Jr. that he could already use the drug he just bought for an additional fee of P20.00. If at all, this only proves an isolated illegal drug transaction involving SPO2 Antillon, Jr., Andanar, and Garbo. There was nothing on record, however, showing that Garbo's house was frequently used as a drug den. Neither did the prosecution prove that Garbo's house had a general reputation as such. Surely, the prosecution had only presented a singular occurrence of the so-called illegal drug activity in Garbo's house. The same does not satisfy the requirement in *Galicia*. Garbo, therefore, cannot be considered a maintainer of drug den. Besides, the supposed *corpus delicti* was not even established in view of the clear violation of the chain of custody rule, compromising its integrity.<sup>[37]</sup> (Emphases omitted.)

After judiciously studying the records of the case, the Court finds that the pieces of evidence relied upon by the RTC in convicting accused-appellant are insufficient to convict him for Maintenance of a Drug Den under Section 6 Article II of RA 9165. The single and isolated test-buy allegedly conducted by the PDEA team at accused-appellant's house<sup>[38]</sup> does not evince that such house is being "regularly" and "frequently" used as a place where illegal drugs are



sold to and/used by any person. As in the case of *Andanar*, the sale of the alleged illegal drugs at the house of accused-appellant only proves an isolated illegal drug transaction which neither establishes the frequent use of such house as a drug den nor proves its general reputation as a drug den.

There is no evidence introduced by the prosecution that accused-appellant's house was used as a lair or hideaway where prohibited drugs were *regularly* used or sold.<sup>[39]</sup>

Moreover, it is well to emphasize that when the PDEA team served the search warrant, accused-appellant and other occupants of the house were not committing any crime or were not caught using, administering, selling, distributing, or storing illegal drugs. In fact, accused-appellant was at the back of his house cleaning the pigpen when a PDEA agent pointed a gun at him and immediately handcuffed him.<sup>[40]</sup> The prosecution witnesses uniformly testified that accused-appellant was apprehended at the back of his house.<sup>[41]</sup>

Hence, accused-appellant cannot be considered a maintainer of a drug den.

Further, the supposed *corpus delicti* was not even established in view of the clear violation of the chain of custody rule, compromising its integrity.

The chain of custody rule under Section 21 of RA 9165, as amended by RA 10640, "applies whether the drugs were seized in a buy-bust operation or pursuant to a search warrant."<sup>[42]</sup> In fact, in several cases, the Court applied Section 21, Article II of RA 9165, as amended, even when the illegal drugs were seized and confiscated by virtue of a search warrant.<sup>[43]</sup>

In drug-related cases, the seized narcotic substance "constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt."<sup>[44]</sup> Hence, to avoid any unnecessary doubt as to the identity of the dangerous drug, the prosecution must "show an unbroken chain of its custody and account for each link in the chain of custody from the moment the drugs is seized up to its presentation in court as evidence" of the offense.<sup>[45]</sup> For this purpose, compliance with Section 21 is imperative. Because the incident took place before RA 10640 became effective on August 7, 2014,<sup>[46]</sup> the original text of Section 21<sup>[47]</sup> under RA 9165 applies.

To establish an unbroken link in the chain of custody, the prosecution must present "testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence."<sup>[48]</sup> In order to secure a conviction in drug cases, the following links must be established in the chain of custody: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.<sup>[49]</sup>

In the case at bench, while the searching team complied with the witness requirement under Section 21 of RA 9165, it failed to comply with the chain of custody rule.

To stress, no chain-of-custody form was accomplished by the PDEA agents.<sup>[50]</sup> Thus, there is no documentary evidence of every link in the chain from the moment the items were picked up to the time they were offered as evidence as required under Section 21, Article II of RA 9165.

To reiterate, chain of custody means the duly "recorded" movements and custody of the seized item from the time of confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.<sup>[51]</sup> Such recorded movements shall include the "identity and signature" of the person who held temporary custody of the seized item.<sup>[53]</sup> The purpose of

the requirement of chain of custody is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.<sup>[54]</sup>

Similarly, the PDEA agents failed to comply with the second and fourth links in the chain of custody rule, viz.: the turnover of the illegal drugs seized to the investigating officer; and the turnover and submission of the illegal drugs from the forensic chemist to the court. Records reveal that IOI Sabanal turned over the seized items to IOI Panaguiton, the evidence custodian, but failed to turn them over to an investigator.<sup>[55]</sup> Also, there is no statement on how the seized items were submitted by the forensic chemist to the court for identification.<sup>[56]</sup> Evidently, there were gaps in the links of the chain of custody of the seized illegal drugs. The prosecution neither explained the blunders nor provided contrary evidence that the seized items were properly turned over to the authorized officers who were part of the chain to avoid any substitution or contamination.

It is well settled that the chain of custody requirement under Section 21 of RA 9165 is "a matter of substantive law and cannot be brushed aside as a simple procedural technicality."<sup>[57]</sup> This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."<sup>[58]</sup>

The failure on the part of the prosecution to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of accused-appellant. Hence, his acquittal is warranted.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated July 7, 2020, of the Court of Appeals in CA-G.R. CR-HC No. 02948 is **REVERSED** and **SET ASIDE**. Accused-appellant Bobby Lopina y Labestre alias "Barok" is hereby **ACQUITTED** of the charge of violation of Section 6, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is hereby **ORDERED** immediately **RELEASED** from detention unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director General, Bureau of Corrections, Muntinlupa City for immediate implementation. Furthermore, the Director General of the Bureau of Corrections is **DIRECTED** to report to the Court the action taken within five (5) days from receipt of this Resolution.

Copies of this Resolution must be furnished the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of judgment be issued immediately.

**SO ORDERED.**

*Caguioa (Chairperson), Gaerlan, Dimaampao and Singh, JJ., concur*

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<sup>[1]</sup> See Entry of Appearance with Motion to Admit Notice of Appeal; *Rollo*, pp. 5-8.

<sup>[2]</sup> *Id.* at 12-29. Penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap.

<sup>[3]</sup> *Id.* at 31-48. Penned by Presiding Judge Rose Edith G. Togonon.

<sup>[4]</sup> SEC. 6. *Maintenance of a Den, Dive or Resort.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos

(P10,000,000.00) shall be imposed upon any person or group of persons who shall maintain a den, dive or resort where any dangerous drug is used or sold in any form.

[5] As culled from the CA Decision; *rollo*, p. 13.

[6] *Id.* at 31.

[7] Also referred to as "Gilbert" and "Sumalancay" in some parts of the *rollo* (see *id.* at 34, 36-37).

[8] *Id.* at 14.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 15.

[12] *Id.* at 16.

[13] *Id.* at 34.

[14] *Id.* at 16.

[15] *Id.* at 17.

[16] *Id.*

[17] *Id.* at 17 and 35.

[18] *Id.* at 17-18.

[19] *Id.* at 18-19.

[20] *Id.* at 19.

[21] *Id.*

[22] *Id.* at 31-48.

[23] *Id.* at 48.

[24] *Id.* at 44-46.

[25] *Id.* at 12-29.

[26] *Id.* at 22-29.

[27] *Id.* at 5-8.

[28] *Id.* at 56-58.

[29] *Id.* at 51-53.

[30] **People v. Dapitan, G.R. No. 207518** (Notice), November 24, 2021.

[31] **People v. Quiñones, G.R. No. 250908**, November 23, 2020.

[31] **People v. Cariño**, 850 Phil. 457, 470-471 (2019).

[33] **People v. Andanar, G.R. No. 246284** June 16 2021.

[34] *Rollo*, pp. 24-25.

[35] *Id.* at 32-33.

[36] *Supra*.

[37] *Id.*

[38] See *rollo*, pp. 24-25.

[39] See the list of exhibits formally offered by the prosecution; *id.* at 32-33.

[40] *Id.* at 40.

[41] *Id.* at 35-36 and 39.

[42] **Tumabini v. People, G.R. No. 224495**, February 19, 2020, 933 SCRA 60.

[43] *Id.* See also **Dizon v. People**, 850 Phil. 518 (2019); **Cunanan v. People**, 843 Phil. 96 (2018); **People v. Gayoso**, 808 Phil. 19 (2017); and **Derilo v. People**, 784 Phil. 679 (2016).

[44] **People v. Malabanan, G.R. No. 241950**, April 10, 2019, 901 SCRA 600, citing **People v. Suan**, 627 Phil. 174, 188 (2010).

[45] **People v. Gamboa**, 833 Phil. 1055, 1066 (2018), citing **People v. Viterbo**, 739 Phil. 593, 601 (2014).

[46] Footnote 26 in **People v. Gutierrez, G.R. No. 236304**, November 5, 2018, 884 SCRA 276.

[47] 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;



- [48] **Derito v. People**, 784 Phil. 679, 687 (2016), citing **People v. Alivio**, 664 Phil 565, 577-580 (2011).
- [49] **People v. Gayoso**, supra note 43 at 31, citing **People v. Nandi**, 639 Phil. 134, 144-145 (2010).
- [50] See the list of exhibits formally offered by the prosecution; *rollo*, pp. 32-33.
- [51] **People v. Quijano, G.R. No. 247558**, February 19, 2020, 933 SCRA 348, citing Sec. 1(b), Dangerous Drugs Board Regulation No. 1 (2002).
- [53] *Id.*
- [54] See **People v. Alboka**, 826 Phil. 487, 502 (2018); **People v. Andrada**, 833 Phil. 999, 1010 (2018).
- [55] See *rollo*, pp. 35 and 38.
- [56] See *id.* at 28 and 45-46.
- [57] **People v. Cabrellos**, 837 Phil. 428 (2018).
- [58] **Matabilas v. People, G.R. No. 243615**, November 11, 2019, 925 SCRA 347.