



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 189808

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

- *versus* -

Promulgated:

MERIAM GURU y KAZAN,
Respondent.

24 OCT 2012

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DECISION

LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision¹ of the Court of Appeals in CA-G.R. CR.-H.C. No. 03301 dated August 12, 2009, which affirmed *in toto* the

Decision² of the Regional Trial Court (RTC) of Manila in Crim. Case Nos. 04-230545-46 dated April 12, 2008.

Accused-appellant Meriam Guru y Kazan was charged in two separate Informations, charging her with violation of Sections 5 and 11(3), respectively, of Article II, Republic Act No. 9165:

Criminal Case No. 04-230545
(Violation of Section 5, Article II, R.A. No. 9165):

That on or about September 24, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell to a poseur-buyer ZERO POINT ZERO ONE TWO (0.012) GRAM of white crystalline substance placed in one (1) heat sealed transparent plastic sachet marked as “MG” containing methylamphetamine hydrochloride known as “SHABU,” a dangerous drug.³

Criminal Case No. 04-230546
(Violation of Section 11[3], Article II, R.A. No. 9165):

That on or about September 24, 2004, x x x in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly have in [her] possession and under [her] custody and control ZERO POINT ZERO ONE SEVEN (0.017) grams of white crystalline substance known as “SHABU” marked as “MGK” placed in a transparent plastic sachet containing methylamphetamine hydrochloride, which is a dangerous drug.⁴

The forensic chemist, Police Inspector (P/Insp.) Maritess Mariano (P/Insp. Mariano) was not presented as a witness, due to the stipulation by the defense as to her qualification, as well as the “genuineness and due execution of the documents she executed together with the specimen.”⁵ The

² CA *rollo*, pp. 14-22.

³ Records, p. 2.

⁴ Id. at 3.

⁵ TSN, April 21, 2006, p. 2.

prosecution, on the other hand, admitted that P/Insp. Mariano “does not have personal knowledge as to the ultimate source of the subject specimen.”⁶

Police Officer (PO) 1 Conrado Juaño (PO1 Juaño) testified that on September 23, 2004, a confidential informant went to the Moriones Police Station 2, Station Anti-Illegal Drug Special Operations Task Unit (SAID-SOTU) and informed P/Insp. Ricardo Layug, Jr. (P/Insp. Layug) and the members of SAID-SOTU that a certain “Meriam” was conducting illegal shabu activities along Isla Puting Bato, Tondo, Manila. P/Insp. Layug instructed Senior Police Officer (SPO) 3 Rolando del Rosario (SPO3 Del Rosario) to verify the information and, if possible, carry out a buy-bust operation. At around 6:30 p.m. that day, PO1 Juaño, SPO3 Del Rosario, and the confidential informant proceeded to an alley in Isla Puting Bato identified by the informant to conduct the surveillance, but the subject could not be located. They returned to the station where P/Insp. Layug instructed them to return to the place the following day to continue the operation.⁷

The confidential informant returned to the station at around 12:00 noon the following day, September 24, 2004. SPO3 Del Rosario conducted a briefing to plan their operation against the subject. PO1 Juaño was designated as *poseur-buyer*, while PO1 Earlkeats Bajarias (PO1 Bajarias) and SPO3 Del Rosario were designated as perimeter backups. SPO3 Del Rosario handed PO1 Juaño a 100-peso bill marked “RR,” the initials of Del Rosario. PO1 Arnel Tubbali (PO1 Tubbali) prepared a Coordination and Pre-Operation Report⁸ which was received by the Philippine Drug Enforcement Agency (PDEA) on the same day.⁹

⁶ Id.

⁷ Id. at 3-4.

⁸ Records, p. 8; Exhibit “H.”

⁹ TSN, April 21, 2006, pp. 4-5.

The buy-bust team and the confidential informant arrived at Isla Puting Bato at around 4:00 p.m. They found accused-appellant seated in an alley in front of her house. They approached accused-appellant, who recognized the confidential informant, and asked, “*Kukuha ka ba? Magkano?*” The informant replied, “*Siya daw kukuha,*” pointing to PO1 Juano. PO1 Juano confirmed, “*Piso lang*” (₱100.00), and showed accused-appellant the money. Accused-appellant took a small plastic sachet from her pants’ back pocket and handed it to PO1 Juano. PO1 Juano introduced himself as a police officer. Accused-appellant was surprised. PO1 Juano arrested accused-appellant, while SPO3 Del Rosario and PO1 Bajarias rushed to the scene for assistance. The marked ₱100-bill was recovered from accused-appellant. Accused-appellant was asked to empty her pocket. Another small transparent plastic sachet was recovered from accused-appellant.¹⁰

The team conveyed accused-appellant to the station, where the items recovered were marked by the investigator in front of PO1 Juano. The sachet sold to PO1 Juano was marked “MG,” while the sachet recovered from accused-appellant was marked “MGK.” PO1 Bajarias prepared a request for the examination of the specimens, the Affidavit of Apprehension, Booking Sheet, Arrest Report and Referral Letter for Inquest.¹¹

On cross-examination, PO1 Juano testified that when he arrested accused-appellant, he informed her of her constitutional rights. He clarified that the Coordination and Pre-Operation Report prepared by PO1 Tubballi was faxed to PDEA, which in turn returned it with a certification giving them authority for the operation. When confronted by the fact that the name of accused-appellant was not mentioned in the Coordination and Pre-

¹⁰ Id. at 5-7.

¹¹ Id. at 7-9.

Operation Report, PO1 Juaño testified that it was not the policy of the PDEA in 2005 to state the name of the subject.¹²

PO1 Bajarias corroborated PO1 Juaño's testimony that they, together with SPO3 Del Rosario and the confidential informant, were at Isla Puting Bato, Tondo, Manila on September 24, 2004, at around 4:00 p.m. PO1 Bajarias was around 10 meters away from PO1 Juaño during the operation for 10 to 15 minutes. At this time, PO1 Juaño and the confidential informant talked to a woman, who was later identified as accused-appellant. PO1 Juaño handed the buy-bust money to accused-appellant, while the latter handed to the former a transparent plastic sachet. PO1 Bajarias saw PO1 Juaño introducing himself as a police officer, arresting the accused-appellant and informing her of her constitutional rights. Throughout the operation, PO1 Bajarias guarded the place to ensure their safety.¹³

On cross-examination, PO1 Bajarias disclosed that he saw what PO1 Juaño, the accused-appellant, and the informant were doing, but could not hear what they were saying.¹⁴ However, during the time PO1 Juaño was informing accused-appellant of her constitutional rights, PO1 Bajarias was already within four meters from the suspect.¹⁵

The defense presented the testimony of accused-appellant herself. Accused-appellant testified that she was at home on September 24, 2004. She was praying at around 3:00 p.m. that day, when a group of men arrived. Two of them simply entered her house, which was left open, while four were left outside. They waited for her to finish her prayers, before asking her to go with them. She was told that she should explain herself at the

¹² Id. at 10-17.

¹³ TSN, May 2, 2006, pp. 2-3.

¹⁴ Id. at 5.

¹⁵ Id. at 11.

precinct. She cried since she does not know why she was arrested and she believed that she did not violate any law. She was brought to the police station, detained, and was asked what she was selling. She told them that she was not selling anything. She was in Manila to apply for a job abroad. She denied the charges filed against her.¹⁶

Bhoy Tagadaya, who was fetching his brother-in-law in the vicinity where accused-appellant was arrested, testified that at around 3:00 p.m. on September 24, 2004, he saw six men in civilian clothes alight from a Ford Fiera. Two men went inside the house in front of that of his brother-in-law. Fifteen minutes later, the two men came out of the house with the accused-appellant, who was crying and shouting, and left. Someone had asked his brother-in-law about the incident. Tagadaya's brother-in-law told that person that it was Tagadaya who saw the incident.¹⁷

On April 12, 2008, the RTC rendered its Decision, the dispositive portion of which is as follows:

WHEREFORE, judgment is hereby rendered as follows, to wit:

1. In Criminal Case No. 04-230545, finding accused, Meriam Guru y Kazan, **GUILTY** beyond reasonable doubt of the crime charged, she is hereby sentenced to life imprisonment and to pay the fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.
2. In Criminal Case No. 04-230546, finding accused, Meriam Guru y Kazan, **GUILTY** beyond reasonable doubt of the crime charged, she is hereby sentenced to suffer the indeterminate penalty of 12 years and 1 day as minimum to 17 years and 4 months as maximum; to pay a fine of [₱300,000.00]¹⁸ without subsidiary imprisonment in case of insolvency and to pay the costs.¹⁹

¹⁶ TSN, January 15, 2008, pp. 3-6.

¹⁷ TSN, April 1, 2008, pp. 3-6.

¹⁸ Erroneously encoded as "P300,0000.00" in the RTC Decision.

¹⁹ CA *rollo*, p. 21.

The RTC found the testimonies of PO1 Juano and PO1 Bajarias, together with the documentary and object evidence, sufficient to prove accused-appellant's guilt beyond reasonable doubt. On the other hand, accused-appellant failed to show any ill motive on the part of the police officers to testify against her. As regards the testimony of Tagadaya, the court held that there was no showing that he witnessed the incident leading to accused-appellant's arrest.²⁰

On August 12, 2009, the Court of Appeals rendered its Decision in accused-appellant's appeal, affirming the RTC Decision *in toto*. According to the Court of Appeals, the alleged failure of the police officers to indicate the name of the accused-appellant in the pre-operation report did not affect the legality of the buy-bust operation, and was adequately explained by PO1 Juano, who had testified that it was not yet the policy of the PDEA in 2005 to indicate the name of the subject of the buy-bust operation.²¹ Neither is the examination of marked money for fingerprints required. It is sufficient that the marked money was received by the accused during the buy-bust operation.²² As regards the allegation of accused-appellant that the prosecution failed to comply with the procedure for the proper custody and disposition of the confiscated drugs, the Court of Appeals held that the Implementing Rules and Regulations of Republic Act No. 9165 explicitly provides that noncompliance with the prescribed procedure can be excused if there are justifiable grounds therefor.²³ The Court of Appeals emphasized that, contrary to established jurisprudence, accused-appellant was not shown to have questioned the custody of the confiscated drugs or raised the issue of disposition and preservation of said drugs before the trial court.²⁴

²⁰ Id. at 19-20.

²¹ Id. at 109-110.

²² Id. at 111.

²³ Id. at 111-112.

²⁴ Id. at 113-114.

On appeal before this Court, accused-appellant manifested that she is adopting the Appellant's Brief submitted to the Court of Appeals.²⁵ In said Brief, accused-appellant presented the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HER GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

III

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING THE FAILURE OF THE APPREHENDING TEAM TO PROVE THE IDENTITY AND INTEGRITY OF THE CORPUS DELICTI OF THE OFFENSE.²⁶

Evidence of the Sale and Possession

In the prosecution of illegal sale of drugs, the elements that should be proven are the following: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. The prosecution must (1) prove that the transaction or sale actually took place, and (2) present in court evidence of the *corpus delicti*.²⁷ As regards the prosecution for illegal possession of dangerous drugs, the elements to be proven are the following: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such

²⁵ Rollo, pp. 29-30.

²⁶ CA rollo, pp. 40-41.

²⁷ *People v. Morales*, G.R. No. 188608, February 9, 2011, 642 SCRA 612, 619.

possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.²⁸

As held by both the trial court and the Court of Appeals, the testimonies of PO1 Juanó and PO1 Bajarias sufficiently prove there was a transaction between the *poseur-buyer*, PO1 Juanó, and accused-appellant:

Q: What was Meriam doing at that time?

A: She was seated in an alley in front of her house.

Q: Who was with her, if you know?

A: She was alone, sir.

Q: What happened next upon seeing Meriam?

A: We approached the subject and the subject recognized the informant.

Q: What happened?

A: When Meriam recognized the informant, the subject asked to the informant – *kukuha ka ba? Magkano?*

Q: What was the reply of the informant?

A: The informant was pointing to me – *siya daw kukuha*.

Q: What happened when the informant pointed [at] you?

A: And I replied – *piso lang*, and showed the money, sir.

Q: To whom did you [show] the money?

A: To a certain Meriam, sir.

Q: Then, what transpired next, Mr. Witness?

[A:] I handed to her the ₱100.00 bill, sir.

Q: What happened when you handed it to Meriam?

A: And the subject took from her back pants pocket one small plastic sachet containing *shabu* and handed it to me, sir.

Asst. Pros. Yap:

Q: So, upon receipt of the same, what did you do?

A: At the time we examined the small plastic sachet containing [the] suspected *shabu*, sir.

²⁸

People v. Mendoza, G.R. No. 186387, August 31, 2011, 656 SCRA 616, 622.

- Q: What was [sic] the white crystalline substance suspected to be *shabu*? What was inside?
- A: White crystalline substance suspected to be *shabu*, sir.
- Q: What happened next after that?
- A: At that point, I introduced myself as a police officer and the subject was surprised and then I arrested her then SPO2 Del Rosario and Bajarias rushed to the scene for assistance.²⁹ (Italics supplied.)

The testimony of PO1 Juño likewise tended to establish the possession by the accused-appellant of another sachet containing the allegedly prohibited substance:

- Q: After that, what did you do?
- A: I requested her to empty her pockets at the back, sir.
- Q: And then, did the accused comply?
- A: Yes, sir.
- Q: What happened?
- A: I recovered another plastic sachet, sir.
- Q: From where?
- A: From her back pocket, sir.
- Q: Who recovered it?
- A: I was the one, sir.
- Q: How did you recover that?
- A: When she emptied her pocket at the back I saw a plastic sachet, sir.³⁰

However, in order for the prosecution to successfully overturn the constitutionally mandated presumption of innocence in favor of the accused, it should, in drug-related cases, prove not only the acquisition of the subject specimens through a legitimate buy-bust operation, but likewise the identity and integrity of the *corpus delicti* by a substantially unbroken chain in the

²⁹ TSN, April 21, 2006, pp. 6-7.

³⁰ Id. at 16.

custody of said specimens from their acquisition to the necessary laboratory examination.

Chain of custody

The above elements that should be proven in both the sale and possession of dangerous drugs intrinsically include the identification of what was seized by police officers to be the same item examined and presented in court. This identification must be established with moral certainty and is a function of the rule on the chain of custody.³¹ In *Malillin v. People*,³² we discussed how the chain of custody of seized items should be established:

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. (Citations omitted.)

³¹ *People v. Sitco*, G.R. No. 178202, May 14, 2010, 620 SCRA 561, 574-575.
³² G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

In the case at bar, PO1 Juaño testified that he obtained the first plastic sachet containing white crystalline substance when the same was sold to him by accused-appellant.³³ PO1 Juaño introduced himself as a police officer and confiscated the marked ₱100-bill which he had just recently given to accused-appellant as payment for the item sold. He asked accused-appellant to empty her pocket and recovered the second plastic sachet containing white crystalline substance.³⁴

According to PO1 Juaño, the buy-bust team brought accused-appellant to the station, where the items recovered were marked by “the investigator” in his presence. He, however, failed to mention the name of this investigator. The sachet sold to PO1 Juaño was marked “MG,” while the sachet recovered from accused-appellant was marked “MGK.”³⁵ PO1 Juaño further testified that PO1 Bajarias prepared a request for the examination of the specimens.³⁶ Curiously though, the specimens were not discussed in the testimony of PO1 Bajarias,³⁷ except for his account of accused-appellant handing a transparent plastic sachet to PO1 Juaño in exchange for the buy-bust money.³⁸

Contrary to the testimony of PO1 Juaño, however, the request for the laboratory examination of the specimens submitted in evidence by the prosecution was prepared by a certain Police Superintendent Ernesto Tubale Barlam.³⁹ The lower left hand portion of the Request shows that it was delivered by a certain PO2 Garcia. The testimonies of the prosecution witnesses, PO1 Juaño and PO1 Bajarias, did not mention a Police Superintendent Barlam or a PO2 Garcia.

³³ TSN, April 21, 2006, pp. 5-7.

³⁴ Id.

³⁵ Id. at 8.

³⁶ Id. at 7-9.

³⁷ TSN, May 2, 2006, pp. 2-11.

³⁸ Id. at 3.

³⁹ Records, p. 90; “Exhibit A.”

It is noteworthy that there was no further testimony regarding the subject specimens. As stated earlier, forensic chemist P/Insp. Mariano was not presented as a witness due to the stipulation by the defense as to her qualification, as well as the “genuineness and due execution of the documents she executed together with the specimen.”⁴⁰ However, the prosecution likewise admitted that P/Insp. Mariano “does not have personal knowledge as to the ultimate source of the subject specimen,”⁴¹ leaving it to the other witnesses to establish that the specimen examined by P/Insp. Mariano were the same ones recovered in the buy-bust operation.

Pertinently, Section 21 of Republic Act No. 9165 provides as follows:

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[.] (Emphasis supplied.)

While this Court has disregarded the strict compliance of the requisites under Section 21 of Republic Act No. 9165, such liberality, as stated in the

⁴⁰ TSN, April 21, 2006, p. 2.

⁴¹ Id.

Implementing Rules and Regulations,⁴² can be applied only when the evidentiary value and integrity of the illegal drug are properly preserved.

In the case at bar, the physical inventory of the subject specimens was made only at the police station and by an unnamed investigator. This, in itself, evokes to a reasonable mind several questions on the safekeeping of the specimens from the time accused-appellant was arrested, up to the time she and the buy-bust team arrived at the police station. The identity of the person who marked the specimens and his or her competence to distinguish between the *item sold by accused-appellant* and the *item recovered from her* are likewise relevant points of inquiry. Finally, the conflicting evidence as regards the persons who had custody of the specimens after the marking casts serious doubts as to whether the identity and integrity of said items had truly been preserved. We find that these are all substantial gaps in the chain of custody which inevitably creates a rational uncertainty in the appreciation of the existence of the *corpus delicti*. We are, therefore, constrained to acquit accused-appellant in both Criminal Case No. 04-230545 and Criminal Case No. 04-230546 on account of reasonable doubt.

⁴² The Implementing Rules and Regulations state:

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:

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In light of the foregoing discussion, we find it no longer necessary to pass upon the other issues raised in the present appeal.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03301 dated August 12, 2009 is **REVERSED** and **SET ASIDE**. Accused-appellant Meriam Guru y Kazan is hereby **ACQUITTED** in both Criminal Case No. 04-230545 and Criminal Case No. 04-230546 for the failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for another lawful cause.


Let a copy of this Decision be furnished the Director, Women's Correctional, Mandaluyong City, for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court, within five (5) days from receipt of this Decision.

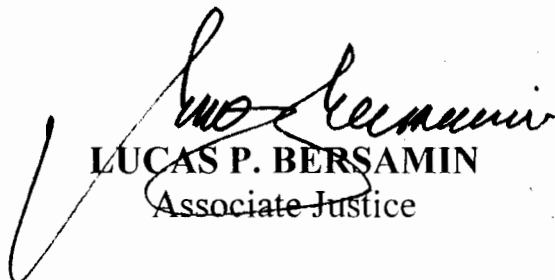
No pronouncement as to costs.

SO ORDERED.

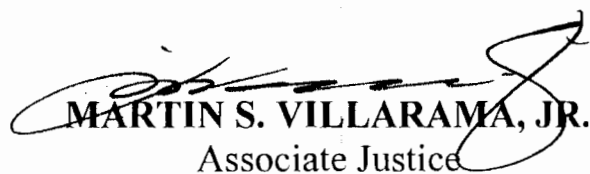

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice




MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice