



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff- Appellee,

G.R. No. 186137

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
REYES, and
*PERLAS-BERNABE, *JJ*.

Promulgated:

DATU NOT ABDUL,
Defendant- Appellant.

JUN 26 2013

X ----- X

DECISION

SERENO, *CJ*:

Datu Not Abdul (appellant) brings this Notice of Appeal¹ dated 4 August 2008 before the Supreme Court, assailing the Decision² dated 14 July 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02783 for being contrary to facts, law, and jurisprudence. The said CA Decision affirmed the Decision³ dated 5 March 2007 of the Regional Trial Court of Baguio City, Branch 61 (RTC) in Criminal Case No. 24621-R finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.

The sole issue before us is whether the prosecution sufficiently established compliance with the chain-of-custody rule.

* Designated additional member in lieu of Associate Justice Martin S. Villarama, Jr. per raffle dated 19 June 2013.

¹ CA *rollo*, pp. 132-134, penned by Associate Justice Martin S. Villarama, Jr., now a member of this Court, Associate Justices Noel G. Tijam and Arturo G. Tayag concurring.

² Id. at 109-128.

³ Id. at 56-64, penned by Presiding Judge Antonio C. Reyes.

The facts according to the prosecution are as follows:

On 25 June 2005, Police Officer 2 Daniel E. Akia (PO2 Akia) of the Philippine Drug Enforcement Agency-Cordillera Administrative Region (PDEA-CAR) received a telephone call from an informant reporting the illegal drug activities of appellant. Acting on this information, PO2 Akia met with the informant and brought her to the PDEA office for an interview, in the course of which she disclosed that appellant would be coming from Agoo, La Union to meet her between 1:00 p.m. and 2:00 p.m. of that day. Losing no time, Police Senior Inspector Paul John A. Mencia (P S/Insp. Mencia), together with Senior Police Officer 4 Marquez K. Madlon (SPO4 Madlon) and Police Officer 2 Erwin M. Garcia (PO2 Garcia), planned and prepared for a buy-bust operation that was to take place in the afternoon of that day. The team agreed that PO2 Akia would pose as the buyer and bring with him two pieces of ₱500-peso bills and some fake money. They also agreed that the signal for the other police officers to arrest appellant was when PO2 Akia grabbed him.⁴

The police officers, together with the informant, then proceeded to San Vicente, Baguio City. Upon arriving there, SPO4 Madlon and PO2 Garcia hid, while PO2 Akia and the informant stood along the sidewalk. After twenty minutes, appellant arrived on board a taxi. The informant touched PO2 Akia's back to let him know that the passenger of the cab was their target. Appellant got out of the taxi and approached the informant, who introduced the police officer as her friend. PO2 Akia asked appellant how much *shabu* the latter brought, and appellant replied that he had *shabu* worth ₱6,500. Appellant pulled out of his pocket a medium-sized, transparent, heat-sealed plastic sachet containing a white crystalline substance and handed it to PO2 Akia, who subsequently handed the buy-bust money to the former. Appellant started to count it, but soon realized that he was being paid with fake money. PO2 Akia immediately grabbed him and announced that the former was a PDEA agent. Upon seeing the signal, SPO4 Madlon and PO2 Garcia hurried to the scene and assisted PO2 Akia in arresting appellant. Afterwards, the police officers brought him to the PDEA office, where the operation was documented and the arrest report and the Affidavits of the arresting officers were prepared. Also, an inventory of the item seized from appellant was made in the presence of representatives from the Department of Justice (DOJ), the media, and the *barangay* council. PO2 Akia allegedly marked the plastic sachet with the initials "MKM, DEA, EMG" and Exhibit "A."⁵

The plastic sachet was then forwarded to the PNP Regional Crime Laboratory Office Cordillera Administrative Region for analysis. The

⁴ *Rollo*, pp. 3-4.

⁵ *Id.* at 4-5.

forensic analyst, PO2 Juliet Valentin Albon (PO2 Albon), examined the substance inside the sachet. She issued a chemistry report numbered D-057-05 which found that the plastic sachet with markings “A, MKM, DEA, EMG” contained 1.85 grams of a white crystalline substance; and that a qualitative examination gave a positive result for the presence of methamphetamine hydrochloride (*shabu*), a dangerous drug.⁶

Thus, an Information was filed on 30 June 2005, which reads:

That on or about the 25th day of June, 2005, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously sell, and /or distribute to PO1 Daniel E. Akia, Jr., a member of the Philippine Drug Enforcement Agency, based at Melvin Jones, Harrison Road, Baguio City, who passed as buyer, one (1) heat sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as “shabu,” a dangerous drug, weighing 1.85 grams for an agreed amount of ₱6,500.00, without any lawful authority in violation of the aforecited provision of law.⁷

Appellant entered a plea of “not guilty” during his arraignment, after which trial on the merits ensued.⁸

During the pretrial conference, both parties admitted that a forensic chemist had examined the substance allegedly confiscated from respondent, that it was found positive for methamphetamine hydrochloride, and that the forensic chemist prepared a report thereon.⁹

The prosecution presented the testimonies of PO2 Akia, PO2 Garcia, and SPO4 Madlon.¹⁰ It also offered in evidence the money used during the buy-bust operation, the dangerous drug allegedly recovered, and the chemistry report on the dangerous drug retrieved from respondent.¹¹ On the other hand, the defense presented the testimonies of appellant and Norma Abdul, his aunt.¹²

Through the testimonies of appellant and his aunt, the defense alleged that the former was a victim of a frame-up.¹³ It contended that appellant was a native of Cotabato City who went to visit his uncle in La Union. After spending a few weeks in that place, he visited Baguio City with a friend. There, he was apprehended by three men, who brought him to the PDEA

⁶ Id. at 5-6.

⁷ Id. at 3.

⁸ Id.

⁹ Records, p. 55.

¹⁰ Id. at 69, 93, 145.

¹¹ Id. at 147-148.

¹² Id. at 160, 190.

¹³ *Rollo*, p. 8.

office where he was forced to admit that he was engaged in selling *shabu*. He kept denying the accusation, but the police officers continued to keep him in custody. When his aunt visited him, she told him that the police officers were demanding ₱20,000 for his release. However, she was able to give them only ₱5,000. As a result, appellant was not discharged and, instead, a criminal case was filed against him.¹⁴

The RTC held that the straightforward testimonies of the prosecution witness, PO2 Akia, clearly established the identity of appellant as the seller, the object being *shabu*, and the consideration of ₱6,500. Also established were the delivery of the illegal drug and the payment for it.¹⁵ Furthermore, the trial court ruled that there was a presumption of regularity in the performance of the duties of the PDEA officers, because there was no reason for them to impute such a serious charge to the accused.¹⁶ Hence, it found appellant guilty beyond reasonable doubt of the crime charged, and sentenced him to suffer life imprisonment and to pay a fine of ₱500,000, as well as the costs of suit.¹⁷

Aggrieved, appellant, through counsel, filed a Notice of Appeal¹⁸ dated 16 March 2007, citing errors of fact and law in the RTC Decision.

In his Brief¹⁹ dated 16 November 2007, appellant argued that the RTC failed to take into account the glaring inconsistencies in the testimonies of the three police officers.²⁰ He said that PO2 Akia and PO2 Garcia testified that there were only three members of the buy-bust operation team.²¹ However, SPO4 Madlon asserted that it had four members.²² Further, PO2 Akia testified that he handed the drugs over to SPO4 Madlon after the arrest of appellant.²³ According to PO2 Akia, SPO4 Madlon kept the evidence from the time of the arrest to the time appellant was brought to the office.²⁴ On the other hand, SPO4 Madlon testified that the drugs were turned over by PO2 Akia to their team leader P S/Insp. Mencio.²⁵ Appellant also asserted that the buy-bust operation team failed to follow the guidelines for drug operations, as SPO4 Madlon testified that he did not place any markings on the plastic sachet of *shabu* at the place where the arrest took place, but only marked it at the office. Also, the testimonies of PO2 Akia and PO2 Garcia were silent as to when and where the marking of the *shabu* took place. This omission, according to appellant, cast grave doubt on the identity of the

¹⁴ Id. at 7-8.

¹⁵ *CA rollo*, pp. 17-20.

¹⁶ Id. at 20.

¹⁷ Id. at 21.

¹⁸ Id. at 22.

¹⁹ Id. at 35-55.

²⁰ Id. at 43.

²¹ Id. at 44.

²² Id.

²³ Id. at 44-45.

²⁴ Id.

²⁵ Id. at 45.

subject specimen allegedly recovered from him, which may not have been the same one presented in evidence.²⁶

To rebut the arguments of appellant, the state, through the Office of the Solicitor General (OSG), presented its Appellee's Brief.²⁷ It argued that inconsistencies in the testimonies of witnesses with respect to minor details and collateral matters do not affect the substance or weight thereof.²⁸ Also, appellant is not allowed to question, for the first time on appeal, the admissibility of evidence on the ground of a violation of the rule on the chain of custody.²⁹

The CA, citing considerable parts of the RTC's Transcript of Stenographic Notes (TSN), affirmed the RTC's finding that the prosecution was able to sufficiently establish the elements of an illegal sale of dangerous drugs.³⁰ It considered the inconsistencies pointed out by appellant as trivial matters that had no bearing on the crime charged.³¹ It likewise found that appellant had failed to adduce clear and convincing evidence to support his defense of frame-up.³² Lastly, it held that he could not raise on appeal the issue of noncompliance with the chain-of-custody rule if he had failed to do so before the trial court.³³

Undeterred, appellant filed before this Court his Notice of Appeal, dated 04 August 2008.

In a Resolution dated 04 March 2009, the Court required the parties to file their supplemental briefs, if they so desired.³⁴

Appellant filed a Supplemental Brief³⁵ dated 21 May 2009, in which he reiterated the failure of the prosecution to show compliance with the rule on the chain of custody as required by Republic Act No. 9165 and its Implementing Rules and Regulations. On the other hand, appellee manifested that all the issues raised had already been discussed in its Brief before the CA and, hence, would no longer file any supplemental brief.³⁶

THE COURT'S RULING

Although we recognize and laud the CA's thorough discussion, the records of the case point to significant lapses in the chain of custody of the

²⁶ Id. at 48-49.

²⁷ Id. at 77-96.

²⁸ Id. at 86-89.

²⁹ Id. at 89-93.

³⁰ *Rollo*, p. 10.

³¹ Id. at 16.

³² Id. at 16-18.

³³ Id. at 18.

³⁴ Id. at 28-29.

³⁵ Id. at 30-36.

³⁶ Id. at 41.

confiscated sachet. These evidentiary gaps cast reasonable doubt on the identity of the *corpus delicti* that would compel us to acquit appellant.

DISCUSSION

Points of law, theories, issues, and arguments should be brought to the attention of the trial court, as these cannot be raised for the first time on appeal.³⁷ An exception to this rule arises when there is plain error.³⁸ An instance of plain error is overlooking, misapprehending, or misapplying facts of weight and substance that, if properly appreciated, would warrant a different conclusion. This case falls under this exception because the CA, in appreciating the facts, erred in affirming the RTC's ruling that there was compliance with the rule on the chain of custody.

The chain-of-custody rule is a method of authenticating evidence, by which the *corpus delicti* presented in court is shown to be one and the same as that which was retrieved from the accused or from the crime scene.³⁹ This rule, when applied to drug cases, requires a more stringent application, because the *corpus delicti* – the narcotic substance – is not readily identifiable and must be subjected to scientific analysis to determine its composition and nature.⁴⁰ *Malillin v. People*⁴¹ explains this rigorous standard when it comes to the chain of custody of narcotic substances:

xxx 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 was 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. (Emphasis supplied)

Hence, every link in the chain of custody must not show any possibility of tampering, alteration or substitution.⁴² However, it is accepted that a perfect chain is not the standard.⁴³ Nonetheless, two crucial links must be complied with. *First*, the seized illegal drug must be marked in the

³⁷ *Ramos v. PNB*, G.R. No. 178218, 14 December 2011, 662 SCRA 479, 495.

³⁸ *Buklod ng Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc.* G.R. No. 131481, 16 March 2011, 645 SCRA 401, 456.

³⁹ *People v. Alejandro*, G.R. No. 176350, 10 August 2011, 655 SCRA 279, 287-288.

⁴⁰ *Malillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619.

⁴¹ *Id.*

⁴² *Id.* at 632-633.

⁴³ *Asiatico v. People*, G.R. No. 195005, 12 September 2011, 657 SCRA 443.

presence of the accused and immediately upon confiscation. This marking must be supported by details on how, when, and where the marking was done, as well as the witnesses to the marking. *Second*, the turnover of the seized drugs at every stage – from confiscation from the accused, transportation to the police station, conveyance to the chemistry lab, and presentation to the court – must be shown and substantiated.⁴⁴

The records are replete with instances of noncompliance with the foregoing.

The time and place of the marking was never established.

Although the item confiscated from appellant had undoubtedly been marked, no evidence was presented to adequately indicate when, where, and how it was marked.

The testimony of PO2 Akia never established when he marked the plastic sachet and who witnessed his act. His statements as to its marking are limited to the following:

Q Anyway, you said that you were handed a medium sized sachet, did you place any marking on this sachet?

A Yes, sir my initial.

Q And what would those initial be?

A DEA and Exhibit A, sir.

Q I am showing you Exhibit A, a sachet of shabu with marking DEA, MKM, ENG, are these the same markings that you placed?

A Yes, sir.

Q And what does MKM stands for?

A Marquez K. Madlon, sir.

Q How about ENG?

WITNESS

A Erwin N. Garcia, sir.

PROS. CATRAL:

Q And DEA?

A My initial, sir.⁴⁵

Not only was SPO4 Madlon's testimony deficient in the same way as that of PO2 Akia's; the former also averred that he was unaware of when the other police officers marked the item, *viz*:

WITNESS:

A I remember it was Akia who gave me for marking, Sir.

⁴⁴ *People v. Alejandro*, supra at 288-289.

⁴⁵ TSN, 20 February 2006, pp. 22-23.

ATTY. AWISAN:

Q You did not place any marking at the shabu at the place of the arrest?

A I don't know to my co-arresting officers but it was in our office where I put my initials, Sir.

Q So the shabu was marked at your office and the initials of the arresting were placed on that shabu?

A I don't know with my co-officers but for me it was in our office, Sir.⁴⁶

With respect to PO2 Garcia, he never articulated that he had marked the plastic sachet, even if his initials "EMG" were on it. Neither did he corroborate his colleagues' testimonies about the marking of the plastic sachet.⁴⁷

It was unclear who had custody of the drug after PO2 Akia confiscated it from appellant.

PO2 Akia said that he was the one who received the plastic sachet filled with white crystalline substance from appellant. However, the statements of PO2 Akia, PO2 Garcia, and SPO4 Madlon vary as to whom the plastic sachet was given after its confiscation from appellant.

PO2 Akia mentioned that he gave the plastic sachet to SPO4 Madlon, to wit:

Q Anyway, you said that you were handed a medium sized sachet, did you place any marking on this sachet?

A Yes, sir my initial.

Q And what would those initial be?

A DEA and Exhibit A, sir.

Q I am showing you Exhibit A, a sachet of shabu with marking DEA, MKM, ENG, are these the same markings that you placed?

A Yes, sir.

Q And what does MKM stands for?

A Marquez K. Madlon, sir.

Q How about ENG?

WITNESS

A Erwin N. Garcia, sir.

PROS. CATRAL:

Q And DEA?

A My initial, sir.

Q And this was the same item the accused handed to you in exchange with the buy bust money and the boodle money?

A Yes, sir.

⁴⁶ TSN, 11 October 2006, p. 29.

⁴⁷ TSN, 18 April 2006; TSN 25 July 2006.

- Q And at what point in time did you hand this to Officer Madlon?
A After Officer Garcia has placed him under arrest and Officer Garcia has stated his constitutional rights, sir.
- Q And that was conducted in the area?
A Yes, sir⁴⁸

This testimony was supported by that of PO2 Garcia, as follows:

- Q How about the drugs subject of this case?
A It was also turned over to SPO4 Madlon, Sir.

PROS. CATRAL:

- Q So it was SPO4 Madlon who kept the evidence from that point up to the time you brought the accused to your office?
A Yes, Sir.
- Q For proper documentation and dispensation of this case?
A Yes, Sir.⁴⁹

Yet, SPO4 Madlon, the person to whom PO2 Akia had allegedly handed the plastic sachet, refuted this testimony on the witness stand:

- Q How about the alleged shabu which the accused sold to Akia who held those items in custody?
A I remember it was immediately turned over by Akia to our team leader, Sir.
- Q But you said that only you and officer Garcia who went to their place?
A Together with our team leader PSI Mencio, Sir.
- Q And Akia gave the shabu to PSI Mencio also at the place of arrest?
A Yes, Sir.

ATTY. AWISAN:

- Q And, of course, you saw Akia gave that item to PSI Mencio
A Yes, Sir.
- Q And what did PSI Mencio do with the shabu which was allegedly sold to Akia by the accused?
A He held it and after effecting the arrest...I don't know because after the arrest of the suspect I went immediately to Station 8 to inform the operation, Sir.
- Q Where did PSI Mencio bring the shabu which was allegedly handed to him by Akia?
A I did not see it particularly when Akia gave this shabu to PSI Mencio, however, after arriving at our office when I asked the evidence that was the time Akia informed me that the shabu was in the possession of our team leader, Sir.

x x x x

- Q So from the place of arrest at San Vicente Barangay you never saw the shabu subject of this case again, is it not?

⁴⁸ TSN, 20 February 2006, pp. 22-23.

⁴⁹ TSN, 25 July 2006, pp.7-8.

A Just after the arrest of the suspect I saw in the possession of Akia, however just after the arrest I went to coordinate the operation at Station 8, Sir.

Q So you never saw the shabu at your office?

A During the inventory and it was brought for marking, Sir.

Q Who brought out the shabu?

A Akia, Sir.

Q Not Mencio?

WITNESS:

A I remember it was Akia who gave me for marking, Sir.⁵⁰

Furthermore, the Joint Affidavit of Arrest⁵¹ executed by PO2 Garcia and SPO4 Madlon asserts that the poseur-buyer PO2 Akia had turned the plastic sachet over to the team leader, PSI Mencio. The pertinent part of the affidavit reads:

7. The Poseur-Buyer surrendered the medium size, transparent plastic sachet containing suspected dangerous drug (shabu) to the Team Leader.

x x x x

9. Confiscated dangerous drugs were labeled and was submitted at the Crime Laboratory Service, Camp Baco Dangwa, La Trinidad, Benguet for chemical analysis.⁵² x x x.

This inconsistency, contrary to the CA's ruling, is not a trivial matter that is irrelevant to the crime. The assertion of PO2 Akia that he gave the plastic sachet to SPO4 Madlon and the latter's denial of this assertion shows that they failed to secure the integrity of the plastic sachet and its contents after confiscating it from appellant. This failure opens up the possibility of corruption or alteration of the confiscated item.

Moreover, the prosecution failed to show and substantiate the identity of the person who carried the plastic sachet from the location of the buy-bust operation to the police station, who kept it before it was transmitted to the laboratory, who received it after the examination, and who stored it until it was brought to court.

Evidentiary gaps in the chain of custody of the confiscated plastic sachet cast reasonable doubt on its integrity.

All the foregoing facts show that there were substantial evidentiary gaps in the chain of custody of the plastic sachet. Hence, these facts put into

⁵⁰ TSN, 11 October 2006, pp. 26-29.

⁵¹ Records, pp. 6-7.

⁵² Id. at 7.

question the reliability and evidentiary value of the contents of the alleged confiscated plastic sachet from appellant – if indeed it was the same as the one brought to the laboratory for examination, found positive for *shabu*, and then presented before the RTC. It was a grave error for the CA to rule that there was an unbroken chain of custody simply because the plastic sachet had been marked, inventoried, sent to the crime laboratory for analysis, and found positive for *shabu*, despite the fact that the integrity of the confiscated item throughout the entire process had never been established. It is of no moment either that appellant stipulated the existence of Chemistry Report No. D-057-05, as this report did not amount to an admission of the identity of the contents of the plastic sachet. Instead, it merely proved the existence and authenticity of the request for a laboratory examination, and its result had no bearing on the required chain of custody from the time of seizure of the plastic sachet.⁵³

As we have held in *People v. Sanchez*,⁵⁴ “it is fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused.”

We take this opportunity to remind all courts what we have elucidated in *People v. Tan*:⁵⁵

x x x “By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.” Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants’ guilt. It should have given more serious consideration to the *pros* and *cons* of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.


WHEREFORE, in view of the foregoing, the 14 July 2008 Decision of the Court of Appeals is **REVERSED** and **SET ASIDE**. Appellant is hereby **ACQUITTED** on the ground of the failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately **RELEASED** from detention, unless he is being confined for another lawful cause. Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from his receipt of this Decision, the action he has taken.

⁵³ *People v. Alejandro*, supra at 291-292.

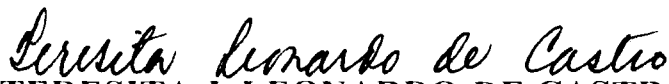
⁵⁴ G.R. No. 175832, 15 October 2008, 569 SCRA 194.

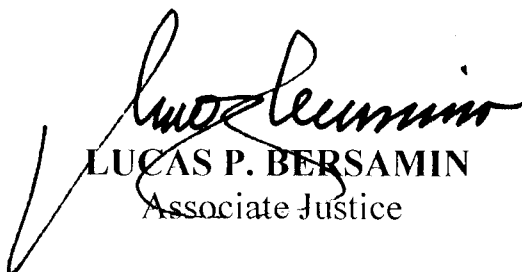
⁵⁵ 401 Phil. 259, 273 (2000).

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
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