



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G. R. No. 194948

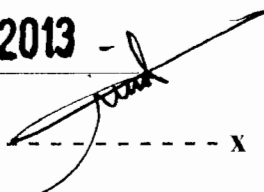
Present:

- versus -

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

Promulgated:

FREDDY SALONGA y AFIADO,
Accused-Appellant.

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DECISION

SERENO, *CJ*:

Before this Court is an appeal from the Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03754 affirming *in toto* the Decision² in Criminal Case Nos. 03-336 and 03-337. The Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) Decision found Freddy Salonga y Afiado guilty of violating Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE FACTS

The accused was charged under two separate Informations³ docketed as Criminal Case Nos. 03-336 and 03-337 for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 (illegal sale and possession of dangerous drugs, respectively).

* Designated additional member in lieu of Associate Justice Bienvenido L. Reyes who penned the CA Decision per raffle dated 26 September 2011.

¹ *Rollo*, pp. 2-11; dated 3 June 2010 penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Ramon R. Garcia and Elihu A. Ybañez.

² *CA rollo*, pp. 32-33; dated 29 November 2008 penned by Presiding Judge Dennis Patrick Z. Perez.

³ Records (Crim. Case No. 03-336, p. 1; Records (Crim. Case no. 03-337), p. 1.

Version of the Prosecution

Police Officer (PO) 3 Gabriel Santos (PO3 Santos) testified that confidential information was obtained that the accused was selling illegal drugs at his residence in *Barangay Libis*, Wawa, Binangonan, Rizal. Consequently, a buy-bust operation was conducted on 7 October 2003, whereupon the accused was arrested for selling methamphetamine hydrochloride or *shabu*.⁴

PO2 Bernardo T. Suarez (PO2 Suarez), who acted as poseur-buyer, went to the house of the accused accompanied by a police “asset.” The asset told the accused that they were going to buy drugs, and upon agreement, PO2 Suarez gave accused two (2) marked ₱100 bills. In return, the accused gave PO2 Suarez a deck of *shabu*. PO2 Suarez then lit a cigarette, which was the agreed signal that the transaction was completed. Thereafter, the accused was arrested by the team.⁵

The police officers, who introduced themselves as members of the CIDG, informed the accused of the reason of his arrest, after which accused was frisked and three (3) more sachets of *shabu* were seized from him. Thereafter, they proceeded to the police station, where the sachets of *shabu* were marked and later brought to the Philippine National Police (PNP) Crime Laboratory.⁶

PO2 Suarez testified that he was the one who marked the sachets with his own initials and who prepared the letter-request for laboratory examination of the specimens.⁷ The seized sachets were then delivered to Eastern Police District Crime Laboratory for examination.⁸ Police Senior Inspector Annalee R. Forro (P/S Insp. Forro), PNP Forensic Chemical Officer, admitted in her testimony that she personally received the drug specimens⁹ which tested positive for methamphetamine hydrochloride.¹⁰

Version of the Defense

The defense presented the accused and Virginia Agbulos (Agbulos) as their witnesses.

Accused testified that at around 5 o'clock in the afternoon of 7 October 2003, while he was in front of his elder brother's house with Larry Ocaya and a certain Apple,¹¹ two persons arrived looking for his brother Ernie Salonga (Ernie).¹² The accused was held by the shirt by one named

⁴ TSN, 26 April 2006, pp. 5-14.

⁵ Joint Sworn Affidavit, records (Criminal Case No. 03-337), pp. 4-5.

⁶ Id. at 5.

⁷ TSN, 31 January 2007, p. 6.

⁸ Supra note 3, at 5.

⁹ TSN, 6 May 2005, p.7.

¹⁰ Physical Science Report No. D-1908-03E, records (Criminal Case No. 03-337), p. 7.

¹¹ TSN, 10 April 2008, p. 10.

¹² Id. at 4-5.

Suarez and was forced to point to the house of his elder brother.¹³ Upon reaching the house of Ernie, they were informed that Ernie was not there. Thereafter, the police officers arrested the accused.¹⁴

To corroborate the testimony of the accused, Agbulos testified that she was with the buy-bust operation team together with Myleen Cerda, who was a police asset, and two police officers. The team was initially looking for Ernie, and it was to her surprise that accused was arrested when Ernie was not found. The accused was then brought to and detained at the CIDG at Karangalan, Cainta, Rizal.¹⁵

After the parties stipulated that the testimony of the proposed witness Larry Ocaya was corroborative of the statements given by the accused, the defense dispensed with his testimony.¹⁶

Upon arraignment, the accused pleaded not guilty to both charges.¹⁷

THE RTC RULING

After trial on the merits, the RTC rendered a Decision¹⁸ finding the accused guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of R.A. 9165. The trial court ruled that *corpus delicti* was presented in the form of *shabu* samples and the chemistry report. The testimony of prosecution witness PO2 Suarez was found by the trial court as having presented a clear picture detailing the transaction. The testimonies of the police officers were given credence in consideration of the presumption of regularity in the performance of their duties. On the other hand, the denials of the accused were found to be negative, weak, and self-serving. The RTC likewise observed that apart from her incredible testimony, witness Agbulos' demeanour in court of being quick to answer, though questions were not yet finished, indicated coaching, which added to her lack of credibility. Indubitably, the accused was caught *in flagrante delicto* of selling *shabu* which led to a warrantless arrest and search which yielded the possession of more illegal drugs.

THE CA RULING

On appeal, the CA affirmed in *toto* the Decision of the RTC and dismissed the appeal.¹⁹ The appellate court ruled that the prosecution was able to sufficiently bear out the statutory elements of the crime. It held that in the absence of proof of any odious intent on the part of the police operatives to falsely impute a serious crime against the accused, the court

¹³ Id. at 6.

¹⁴ Id.

¹⁵ TSN, 27 August 2008, pp. 4-15.

¹⁶ Order, records (Criminal Case No. 03-336), p. 148.

¹⁷ Order, id. at 17.

¹⁸ Id. at 157-158.

¹⁹ *Rollo*, p. 11, CA Decision.

will not allow the testimonies of the prosecution to be overcome by a self-serving claim of frame-up.²⁰ Factual findings of the trial court are accorded respect and great weight, unless there is a misapprehension of facts.²¹

With respect to the question on chain of custody, the appellate court found that the drugs confiscated from the accused were properly accounted for and forthrightly submitted to the Crime Laboratory. The CA further ruled that nothing invited the suspicion that the integrity and evidentiary value of the seized articles were jeopardized.²²

THE ISSUE

Whether or not the RTC and the CA erred in finding that the evidence of the prosecution was sufficient to convict the accused of the alleged sale and possession of methamphetamine hydrochloride, in violation of Sections 5 and 11, respectively, of R.A. 9165.

THE RULING OF THE COURT

The accused maintains that there was no clear and convincing evidence warranting his conviction, as the prosecution failed to establish the actual exchange of the alleged *shabu* and the buy-bust money. It was not clearly shown how the buy-bust operation transpired.²³

The accused further argues that the prosecution failed to prove that the subject items allegedly confiscated from him were the same ones submitted to the forensic chemist for examination;²⁴ thus, they were not able to establish the unbroken chain of custody of the illegal drugs.²⁵

After a careful scrutiny of the records, the Court finds the appeal to be impressed with merit.

It has been consistently ruled that the elements needed to be proven to successfully prosecute a case of illegal sale of drugs are: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.²⁶

Simply put, the prosecution must establish that the illegal sale of the dangerous drugs actually took place together with the presentation in court of the *corpus delicti* or the dangerous drugs seized in evidence.²⁷ Central to

²⁰ Id. at 7.

²¹ Id. at 8.

²² Id. at 9.

²³ Supplemental Brief of the accused, id. at 29.

²⁴ Id. at 30.

²⁵ Id. at 32.

²⁶ *People v. Tiu*, 469 Phil. 163, 173 (2004); *Chan v. Secretary of Justice*, G.R. No. 147065, 14 March 2008, 548 SCRA 337.

²⁷ *People v. Berdadero*, G.R. No. 179710, 29 June 2010, 622 SCRA 196, 202.

this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from the accused.²⁸

The Court has adopted the chain of custody rule, a method of authenticating evidence which 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 in 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.”²⁹

Contrary to the claim of accused, the prosecution was able to clearly recount how the buy-bust operation was conducted. However, the Court finds that the chain of custody was broken in view of several infirmities in the procedure and the evidence presented.

Section 21 of R.A. 9165 delineates the mandatory procedural safeguards in buy-bust operations, which reads:

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; xxx.

In *People v. Salonga*,³⁰ we held that it is essential for the prosecution to prove that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as an exhibit. This Court, however,

²⁸ *People v. Robles*, G.R. No. 177220, 24 April 2009, 586 SCRA 647.

²⁹ *Malillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632-633.

³⁰ G.R. No. 186390, 2 October 2009, 602 SCRA 783.

finds reasonable doubt on the evidence presented to prove an unbroken chain of custody.

First, it is not clear from the evidence that the marking, which was done in the police station, was made in the presence of the accused or his representative. Although we have previously ruled that the marking upon “immediate” confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team,³¹ the same must always be done in the presence of the accused or his representative. Thus, there is already a gap in determining whether the specimens that entered into the chain were actually the ones examined and offered in evidence.

“Crucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after* they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contrabands are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, planting, or contamination of evidence.”³²

Second, the prosecution failed to duly accomplish the Certificate of Inventory and to take photos of the seized items pursuant to the above-stated provision. There is nothing in the records that would show at least an attempt to comply with this procedural safeguard; neither was there any justifiable reason propounded for failing to do so.

Third, we find conflicting testimony and glaring inconsistencies that would cast doubt on the integrity of the handling of the seized drugs. The material inconsistency of who actually received the specimens in the Crime Laboratory creates a cloud of doubt as to whether the integrity and evidentiary value of the seized items were preserved.

PO3 Santos testified on direct examination:

Q What did you do with the 3 plastic sachets containing white crystalline substance recovered from the accused?

A We brought them to the office and we made some markings on the specimens and they were brought to the PNP Crime Laboratory.³³

To corroborate the same, P/S Insp. Forro, the Forensic Chemical Officer, testified as follows:

³¹ *Imson v. People*, G.R. 193003, 13 July 2011, 653 SCRA 826.

³² *People v. Coreche*, G.R. No. 182528, 14 August 2009, 596 SCRA 350, 357-358.

³³ TSN, 26 April 2006, p.13.

Q Who brought those specimens to your office?

A It was a certain PO2 Santos.

Q Who received the specimens?

A **I received it personally.**³⁴ (Emphasis supplied)

However, a perusal of the Request for Laboratory Examination presented by the prosecution shows:

EPD CRIME LABORATORY
SAINT FRANCIS ST. MANDALUYONG CITY
CONTROL NR. 3392-03
CASE NR: D-1908-03
TIME & DATE REC'VD: 1315H 08 OCT '03
RECORDED BY: PO3 KAYAT
RECEIVED BY: PSI CARIÑO
D/by: PO3 SANTOS³⁵ (Emphasis supplied)

The marked discrepancy between the testimony of P/S Insp. Forro and the documentary evidence, which shows that a certain PSI Cariño received the specimens, was not explained by the prosecution. This material and glaring inconsistency creates doubt as to the preservation of the seized items.

Moreover, although PO2 Suarez testified that he was the one who marked the specimens with his own initials,³⁶ he did not identify the seized items in open court to prove that the ones he marked were the same specimens brought to the laboratory for testing and eventually presented in open court. Neither did PO3 Santos, the one who delivered the request and the specimens to the laboratory, identify in open court that the specimens presented are the same specimens he delivered to the laboratory for testing.

While P/S Insp. Forro testified that the specimens she received for testing were the same ones presented in court,³⁷ this Court cannot accurately determine whether the tested specimens were the same items seized from the accused and marked by PO2 Suarez. The failure of the police officers to identify the seized drugs in open court created another gap in the link. Thus, the identity of the *corpus delicti* was not proven.

The gaps in the chain of custody creates a reasonable doubt as to whether the specimens seized from the accused were the same specimens brought to the laboratory and eventually offered in court as evidence. Without adequate proof of the *corpus delicti*, the conviction cannot stand.

³⁴ TSN, 6 May 2005, p. 7.

³⁵ Exhibit "B," records (Criminal Case No. 03-336), p. 61.

³⁶ TSN, 31 January 2007, p.6.

³⁷ TSN, 6 May 2005, p. 6.

In *People v. De Guzman*,³⁸ this Court ruled:

Accordingly, the failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a person charged with a crime, but moral certainty is required as to every proposition of proof requisite to constitute the offense. A conviction cannot be sustained if there is a persistent doubt on the identity of the drug.³⁹

Finally, the presumption of regularity in the performance of official duty cannot be invoked by the prosecution where the procedure was tainted with material lapses. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up which was testified to by a third party witness.⁴⁰ The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.⁴¹

The inconsistency in the evidence and the weak presentation of the prosecution leaves a gaping hole in the chain of custody, which creates a reasonable doubt on the guilt of the accused. In view of the prosecution's failure to adduce justifiable grounds on their procedural lapses and the unexplained conflicting inconsistencies in the evidence presented, we are constrained to reverse the finding of the court *a quo*.

As held in *People v. Umipang*,⁴² “x x x, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution – especially when the pieces of evidence were derived from a buy-bust operation – redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.”

WHEREFORE, the appealed CA Decision dated 3 June 2010 in CA-G.R. CR-H.C. No. 03754 affirming the RTC Decision in Crim. Case Nos. 03-336 and 03-337 dated 29 November 2008 is **SET ASIDE**. Accused **Freddy Salonga y Afiado** is hereby **ACQUITTED** of the charges on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** the accused from custody, unless he is detained for some other lawful cause.

³⁸ G.R. No. 186498, 26 March 2010, 616 SCRA 652.

³⁹ Id. at 668.

⁴⁰ *People v. Umipang*, G.R. No. 190321, 25 April 2012, 671 SCRA 324.

⁴¹ See *Valdez v. People*, 563 Phil. 934 (2007).


⁴² Supra note 35, at 356.

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

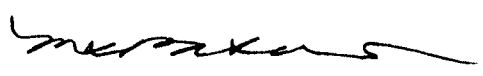

LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE C. MENDOZA
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