



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 186455

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

-versus-

Promulgated:

NOV 19 2014 *H.M. Cabalag/Inflecto*

ROSALINDA CASABUENA,
Respondent.

X-----X

DECISION

BRION, J.:

This is an appeal filed by appellant Rosalinda Casabuena assailing the June 25, 2008 decision¹ of the Court of Appeals (CA) in CA-G.R. CR HC No. 02575. The CA decision affirmed the November 16, 2007 decision² of the Regional Trial Court (RTC), Branch 16, Laoag City, finding the appellant guilty beyond reasonable doubt of violation of Section 5,³ Article II of Republic Act (R.A.) No. 9165, and sentencing her to suffer the penalty of life imprisonment.

¹ Rollo, pp. 2-8; penned by Associate Justice Agustin S. Dizon, and concurred in by Associate Justices Amelita G. Tolentino, Arturo G. Tayag, and Sixto Marella, Jr. Associate Justice Lucenito Tagle dissented.

² CA rollo, pp. 14-24; penned by Judge Conrado A. Ragucos.

³ Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

BR

THE ANTECEDENTS:

The prosecution charged the appellant with illegal sale of shabu under Section 5, Article II of R.A. No. 9165 under an Information which states:

That on or about the 4th day of February, 2004, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously sell in a buy bust operation to Armando Joaquin acting as the poseur-buyer 0.0139 gram of shabu, a dangerous drug, contained in one plastic sachet, without any license or authority to sell the same, in violation of the aforecited law.

CONTRARY TO LAW.⁴

The appellant was duly arraigned and pleaded not guilty to the charge laid.

The prosecution presented the following witnesses in the trial that ensued: Senior Police Officer (*SPO*) 1 Rovimmanuel Balolong; Police Senior Inspector (*P/Sr. Insp.*) Mary Ann Nilo Cayabyab; Armando Joaquin; and SPO2 Loreto Ancheta.

The appellant and Reynante Abian testified for the defense.

SPO1 Balolong testified that on February 4, 2004, one of the police informants, Armando, went to the Laoag City Police Station and informed him that the appellant was selling shabu in *Barangay* 5. Acting on this information, the city's chief of police formed an entrapment team. The team conducted a 'briefing', assigned Armando as the poseur-buyer, and then went to the target area.⁵

When the team arrived there, they positioned themselves 15 meters from the appellant's compound. Armando followed them after receiving a call from SPO1 Balolong. Armando entered the appellant's house when he arrived; he went out after two (2) minutes and made the pre-arranged signal to the other members of the buy-bust team. Immediately after, SPO1 Balolong, PO1 Mangapit, and PO1 Celso Pang-ag went inside the appellant's house.

Once inside, Armando handed the sachet of shabu to SPO1 Balolong. Armando then led the police to the bathroom, and there, Armando grabbed the left hand of the appellant. SPO1 Balolong, for his part, "forced open" the appellant's right hand and took two ₱100 bills from her.⁶ SPO1 Balolong informed the appellant of her constitutional rights, and then ordered PO1 Mangapit to arrest her.

⁴ Records, p. 1.

⁵ TSN, May 28, 2004, pp. 4-5.

⁶ Id. at 6-9.

The police then brought the appellant and the seized items to the Laoag City Police Station. When they arrived there, SPO1 Balolong submitted the seized items to SPO2 Loreto Ancheta, the evidence custodian who, in turn, marked these items.⁷

On cross examination, SPO1 Balolong stated that Armando was just a “walk-in” informant.⁸ SPO1 Balolong also admitted that he did not witness the transaction between Armando and the appellant since he was outside the latter’s house.⁹

P/Sr. Insp. Cayabyab, the Forensic Chemical Officer of the Philippine National Police Crime Laboratory in Laoag City, stated that on February 4, 2004, Merlita Pasion, the laboratory’s receiving clerk, handed to her a letter-request and a small plastic sachet containing alleged shabu. She put her initials on the sachet, made an initial preliminary examination on the submitted specimen, and found it positive for the presence of 0.0139 gram of shabu. She conducted a confirmatory test on the specimen, and this test yielded the same result. The results of these two tests were reflected in the Initial Laboratory Report and in Chemistry Report No. D-011-2004, respectively.¹⁰

Armando declared on the witness stand that in the afternoon of February 4, 2004, he reported to SPO1 Balolong that the appellant was selling shabu. SPO1 Balolong handed him ₱200.00, and told him use the money in buying shabu from the appellant. SPO1 Balolong and his team then went to the target area, while the appellant was left at the police station. Afterwards, SPO1 Balolong called Armando on the phone, and told him to come to the target area. Armando rode a tricycle, alighted at Ablan Avenue, and went inside the appellant’s house.

Once inside, he saw the appellant brushing her teeth in front of the bathroom.¹¹ Armando told the appellant he wanted to buy ₱200.00 worth of shabu. The appellant took the money, got a sachet inside the bathroom, and gave this to the Armando. Armando went outside the house, and made the pre-arranged signal to the police. The police approached Armando who, in turn, handed the sachet to SPO1 Balolong.¹²

Thereafter, the police and Armando entered the appellant’s house. Armando went to the bathroom, and grabbed the right hand of the appellant. SPO1 Balolong, for his part, held the appellant’s left hand, and took the ₱200.00. Armando went home, while the police brought the appellant to the police station.¹³

⁷ Id. at 10-11.

⁸ TSN, July 13, 2004, p. 14.

⁹ Id. at 16-17.

¹⁰ Id. at 5-7.

¹¹ TSN, September 29, 2004, pp. 3-5.

¹² Id. at 5-6.

¹³ Id. at 6-7.

SPO2 Ancheta testified that on February 4, 2004, he received one plastic sachet containing crystalline substances and two (2) pieces of ₱100 bill from SPO1 Balolong. He claimed that he marked the sachet, weighed it, and prepared a request for laboratory examination. With regard to the marked money, SPO2 Ancheta claimed that he noted their respective serial numbers, and then placed them in a steel cabinet. He maintained that the item presented to him was the same item given to him by SPO1 Balolong because it bore the markings he made.¹⁴

The defense presented a different version of the events.

Abian recalled that at around 11:00 a.m. on February 4, 2004, he was in front of the gate of the appellant's house when Armando approached him and asked if there was any available shabu, and whether his (Abian's) aunt was selling shabu. When he answered in the negative, Abian asked him for his aunt's identity. Abian pointed to the appellant – who was then near the bathroom. Thereafter, the appellant called Abian and asked him to buy a shampoo. Abian did as instructed and bought shampoo. When he returned, he handed the shampoo to the appellant who, in turn, went inside the bathroom.¹⁵ Afterwards, SPO1 Balolong went to the bathroom, kicked the door open, and asked the appellant where the money was. When the appellant answered that there was no money, SPO1 Balolong pulled her (appellant) out of the bathroom. The police asked the appellant to put her clothes on, and then brought her to the police headquarters.¹⁶

The appellant testified that on February 4, 2004, she was in front of the bathroom of her house, and about to take a bath, when she saw Armando talking with Abian. The appellant called Abian and requested him to buy shampoo.¹⁷ Thereafter, Armando entered the appellant's house, approached the appellant, and tried to give her money. The appellant refused to accept the money, and returned to the bathroom to take a bath.

While she was taking a bath, the appellant heard a male voice looking for her.¹⁸ Immediately after, somebody kicked the bathroom door open. The appellant sat down and covered her naked body. SPO1 Balolong asked where the money was, but when she answered that she had no idea, SPO1 Balolong pulled her out of the bathroom. SPO1 Balolong went inside the bathroom and searched for the money; he then told the appellant to change clothes since she will be brought to the police station for investigation.¹⁹ According to the appellant, the police did not sign any confiscation receipt. She maintained that she did not sell shabu to Armando on February 4, 2004.²⁰

¹⁴ TSN, January 19, 2005, pp. 2-7.

¹⁵ TSN, January 20, 2006, pp. 2-10.

¹⁶ Id. at 10-12.

¹⁷ TSN, May 12, 2000, pp. 4-8.

¹⁸ Id. at 8-10.

¹⁹ Id. at 10-12.

²⁰ Id. at 13-15.

In its decision dated November 16, 2006, the RTC found the appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165, and sentenced her to suffer the penalty of life imprisonment. It also ordered her to pay a ₱500,000.00 fine.

On appeal, the CA affirmed the RTC decision. The CA held that the prosecution was able to prove that the appellant sold shabu to the poseur-buyer. It found Armando to be a credible witness, in the absence of any showing that there was ill motive on his part to falsely testify against the appellant. It also ruled that Section 21(a) of R.A. No. 965 had been “dutifully followed” when the police conducted a field test of the drugs recovered had been made, and forwarded it and the marked money to the PNP Crime Laboratory.

In her brief and supplemental brief, the appellant essentially maintains that the chain of custody over the seized drug was broken. She added that the integrity and evidentiary value of the object evidence had not been preserved.

The Office of the Solicitor General (*OSG*) counters with the argument that the sale of the shabu between the appellant and the civilian informant had been established. It further argued that the police followed the procedures in the handling and safekeeping of the seized drugs.

THE COURT’S RULING

After due consideration, we resolve to **ACQUIT** the appellant.

The requirements of paragraph 1, Section 21 of Article II of R.A. No. 9165

In a prosecution for the illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (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. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti*, *i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the **same** illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.²¹

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

²¹ See *People v. Pagaduan*, G.R. No. 179029, August 19, 2010, 627 SCRA 309, 318.

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 ours]

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which reads:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory** and **photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis ours)

Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.²² The outlined procedure, however, was not shown to have been complied with by the members of the buy-bust team, and nothing on record suggests that they had extended reasonable efforts to comply with the said statutory requirement in handling the seized evidence. The testimonies of SPO1 Balolong, SPO2 Ancheta, and Armando all showed that **the police did not inventory or photograph the seized shabu either at the place where it was seized or at the police station**. Notably, no photographs or certificate of inventory of the confiscated items appear in the records.

To be sure, Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165, *i.e.*, "*non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]*" This saving clause, however, applies only where the prosecution recognized the procedural lapses and thereafter explained the cited

²²

See *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 304-305.

justifiable grounds, and when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.²³

These conditions were not met in the present case, as the prosecution **did not even attempt to offer any justification why it failed to inventory and to photograph the seized items.** The Court cannot simply presume what these justifications are. Contrary to the CA's ruling, the so-called "field test of the drugs recovered" and its turn over to the crime laboratory together with the marked money are not the procedures mandated by Section 21 and its IRR.

The "Chain of Custody" Requirement

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed. The rule seeks to settle definitively whether the object evidence subjected to laboratory examination and presented in court is the same object allegedly seized from appellant.²⁴

Board Regulation No. 1, Series of 2002 defines **chain of custody** as "*the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.*"

The chain of custody rule requires that *there be testimony about every link in the chain, from the moment the object seized was picked up to the time it is offered in evidence*, in such a way that every person who touched it 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.²⁵

In the present case, the prosecution's evidence failed to establish the chain that would have shown that the shabu presented in court was the very same specimen seized from the appellant.

A vital link in the chain of custody is SPO1 Balolong's possession of the plastic sachet at *Barangay 5, Laoag City* and his delivery of this sachet at the police station. We point out that SPO1 Balolong did not mark the plastic

²³ *People v. Garcia*, 599 Phil. 416, 431 (2009), citing *People v. Sanchez*, 590 Phil. 214 (2008).

²⁴ *Fajardo v. People*, G.R. No. 185460, July 25, 2012, 677 SCRA 541.

²⁵ See *People v. Gutierrez*, G.R. No. 170213, September 3, 2009, 598 SCRA 92, 102, citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

sachet; it was SPO2 Ancheta who allegedly placed markings when the plastic sachet was handed to him at the police station.

It bears noting that SPO2 Ancheta was already the third person (after Armando and SPO1 Balolong) to get hold of the seized shabu from the time it was allegedly sold by the appellant to the poseur-buyer. While marking at the police station is permissible following our ruling in *People v. Resurreccion*,²⁶ we express doubts whether the seized sachet had really been marked, and if so, whether the marked shabu was the same shabu taken from the appellant and eventually presented in court.

P/Sr. Insp. Cayabyab, the PNP Forensic Chemist stated that the seized plastic sachet presented to her in court did not bear the mark “RC”. To directly quote from the records:

ATTY. CASTOR RAVAL:

x x x x

Q: Will you look again at Exhibit “B” and please tell the Court if you can find the initial or signature of the accused ROSALINDA CASABUENA?

P/SR. INSP. CAYABYAB:

A: None, sir.

Q: So, you do not know of your own personal knowledge from whom the specimen ordinarily called shabu came from?

A: Yes, sir.

Q: I understand that after your laboratory examination of the specimen[,] another Officer or expert in your Office made another examination, did I understand you right?

A: Sir, I was the only one who examined the specimen.

x x x x²⁷ (Emphasis supplied).

P/Sr. Insp. Cayabyab’s testimony is inconsistent the claim of SPO2 Ancheta that he marked the seized sachet with, among others, “RC” which stands for the appellant’s initials. We are puzzled why the specimen presented to SPO2 Ancheta bore the initial “RC” while the item presented to P/Sr. Insp. did not have the appellant’s initials.

Notably, while the Initial Laboratory Report stated that the specimen submitted contained “markings,” it **did not specify what these marking were**. Unlike the usual chemistry reports, Chemistry Report No. D-011-2004 likewise did not state what markings the police placed on the plastic

²⁶ G.R. No. 186380, 12 October 2009, 603 SCRA 510.

²⁷ TSN, July 13, 2004, p. 9.

sachet submitted for laboratory exam. In the absence of any evidence, we cannot assume that the markings being referred to in both the Initial Laboratory Report and in the Chemistry Report were the same markings allegedly placed by SPO2 Ancheta. We cannot assume a matter not stated in the records.

We also note that there is a discrepancy between the quantity of shabu stated in the *Request For Laboratory Examination* (0.1 gram) and in the Chemistry Report No. D-011-2004 (0.0139 gram). It is dangerous to assume that the police merely rounded off the weight of the shabu when it made the *Request*. At any rate, common sense and fair play dictates the police to state the exact quantity of the drug or drugs being requested to be examined since shabu, by its very nature, is susceptible to alteration, tampering, substitution, and exchange.

No Presumption of Regularity in the Performance of Official Duties

Finally, we stress that the presumption of regularity in the performance of official duty obtains only when there is no deviation from the regular performance of duty.²⁸ Where the official act in question is irregular on its face, no presumption of regularity can arise. Our declaration in *People v. Samuel Obmiranis y Oreta*²⁹ is particularly instructive:

x x x The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course. There is indeed merit in the contention that where no ill motives to make false charges was successfully attributed to the members of the buy-bust team, the presumption prevails that said police operatives had regularly performed their duty, but the theory is correct only where there is no showing that the conduct of police duty was irregular. *People v. Dulay* and *People v. Ganenas* in fact both suggest that the presumption of regularity is disputed where there is deviation from the regular performance of duty. Suffice it to say at this point that the presumption of regularity in the conduct of police duty is merely just that - a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.

We also find it highly unusual that the police would allow a civilian walk-in informant like Armando to transact with the appellant on his own. During the sale, all the police officers were positioned outside appellant's house, such that Armando even had to step out of the house in order to give the pre-arranged signal to them. SPO1 Balolong also admitted that he did not witness the appellant hand the shabu to the poseur buyer. While police are given wide leeway in the manner of conducting their entrapment

²⁸ See *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791, 822.

²⁹ G.R. No. 181492, December 16, 2008, 574 SCRA 140.

operations, the ideal scenario would have been to have a member of the police act as a poseur buyer, so that a member of the police could be part of, and be a witness to, the transaction.

While buy-bust operations deserve judicial sanction if carried out with due regard for constitutional and legal safeguards, we remind the courts to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Consequently, courts are required to put the prosecution evidence through the crucible of a severe testing, and the presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused.³⁰

In sum, we hold that the appellant's acquittal for failure of the prosecution to prove her guilt with moral certainty. Corollarily, the prosecution's failure to comply with Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act, compromised the identity of the item seized, leading to the failure to adequately prove the *corpus delicti* of the crime charged.


WHEREFORE, premises considered, we **REVERSE** and **SET ASIDE** the June 25, 2008 decision of the Court of Appeals in CA-G.R. CR HC No. 02575. Appellant Rosalinda Casabuena is hereby **ACQUITTED** 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 Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report the action she has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

³⁰

See *People v. Santos*, 562 Phil. 458, 472 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

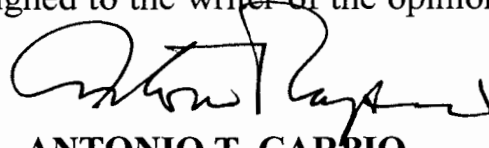

MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

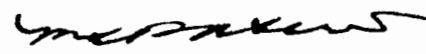
ATTESTATION

I attest 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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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