



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE G.R. No. 202701
PHILIPPINES,
Plaintiff-Appellee,

- versus -

Present:

VELASCO, JR.,*
LEONARDO-DE CASTRO,
Acting Chairperson,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

EDILBERTO BALIBAY y
LABIS and MARICEL
BALIBAY BIJA-AN,
Defendant-Appellants.

Promulgated:

SEP 10 2014

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DECISION

PEREZ, J.:

Before Us is an appeal, which seeks for the reversal of the Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00630-MIN dated 15 February 2012, which affirmed the Decision of the Regional Trial Court (RTC) in Criminal Case Nos. 2004-469 to 470 dated 30 August 2007,² convicting accused EDILBERTO BALIBAY y LABIS and MARICEL BALIBAY y BIJA-AN for violation of Article II, Section 5, Paragraph 1, in

* Per Special Order No. 1772, dated 28 August 2014.

¹ Penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Edgardo A. Carmello and Pedro B. Corales concurring; CA rollo, pp. 76-93.

² Penned by Judge Noli T. Catli; records, pp. 372-377.

relation to Section 26³ and accused MARICEL BALIBAY y BIJA-AN for violation of Article II, Section 11, Paragraph 3 of Republic Act No. 9165 (R.A. No. 9165),⁴ otherwise known as “Comprehensive Dangerous Drugs Act of 2002”.

The Information

Accused’s conviction stemmed from two (2) sets of Information, with the following allegations:

Criminal Case No. 2004-469:

The undersigned Asst. City Prosecutor accuses EDILBERTO BALIBAY Y LABIS and MARICEL BALIBAY y BIJA-AN for Violation of Paragraph 1, Section 5 in relation to Section 26, both of Article II of Republic Act No. 9165, committed as follows:

That on or about June 16, 2004, at more or less 1:30 o’clock in the afternoon, at Barra, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (EDILBERTO BALIBAY y LABIS and MARICEL BALIBAY y BIJA-AN), conspiring, confederating together and mutually helping one another, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a poseur buyer/decoy One (1) small heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, weighing 0.09 gram, accused knowing the same to be a dangerous drug, in consideration of Two Hundred Pesos (Php200.00) consisting of One (1) pc. Php200.00 bill, which was previously marked with “CLT” initials for the purpose of the buy-bust operation.⁵

Criminal Case No. 2004-470

The undersigned Asst. City Prosecutor accuses Maricel Balibay y Bija-An for violation of Section 11, Paragraph 2(3), Article II of Republic Act No. 9165, committed as follows:

That on or about June 16, 2004, at more or less 1:30 o’clock in the afternoon, at Barra, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused,

³ *People v. Edilberto Balibay y Labis and Maricel Balibay y Bija-An*, Case No. 2004-469; id. at 2.

⁴ *People v. Maricel Balibay y Bija-An*, Crim. Case No. 2004-470; id. at 13.

⁵ Id. at 2.

without being authorized by law to possess or use any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly have in her possession, custody and control One (1) rectangular heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, weighing 0.10 gram; accused well-knowing that the substance recovered from her possession is a dangerous drug.⁶

When arraigned, accused entered a plea of not guilty. Thereafter, trial on the merits ensued.

Evidence of the Prosecution

During trial, the prosecution presented three (3) witnesses: Senior Police Officer 1 Mariano Durango (SPO1 Durango), the Receiving Clerk of the Crime Laboratory, Philippine National Police (PNP), Patag, Cagayan de Oro City; Police Officer 3 Danilo Radam (PO3 Radam), who after seeing the accused hand one (1) sachet containing white crystalline substance to PO1 Cotta Tanggote⁷ (PO1 Tanggote), arrested the accused, informed them of their constitutional rights and conducted a body search and recovered the ₱200.00 marked money; and PO1 Tanggote, who acted as poseur-buyer, conducted a body search on accused Maricel and recovered one (1) sachet containing white crystalline substance.

Acting as poseur-buyer, PO1 Tanggote, together with a confidential agent, proceeded to the house of the accused to conduct buy-bust operation. While there, accused Edilberto called her daughter, accused Maricel, who was at the second floor of the house. After a while, accused Maricel went downstairs and handed one (1) sachet containing white crystalline substance to PO1 Tanggote, who immediately called the back-up police officers. Immediately, the Philippine Drug Enforcement Agency (PDEA) personnel rushed to the scene and arrested both the accused. PO3 Radam, after informing the accused their constitutional rights, conducted a body search on accused Edilberto and recovered the marked money of ₱200.00. PO1 Tanggote, on the other hand, conducted a body search on accused Maricel and recovered one (1) transparent sachet containing white crystalline substance.

Both the accused were brought to the PDEA Office at Velez Street, Cagayan de Oro City for booking and inventory. The investigation was

⁶ Id. at 13.

⁷ Also referred as PO2 Tanggote in TSN and Records.

conducted by SPO1 Benjamin Amacanim (SPO1 Amacanim). While conducting the investigation, SPO1 Amacanim requested PO1 Tanggote to mark the specimen, which PO1 Tanggote marked as:

EXH “B” One small heat-sealed transparent plastic sachet containing white crystalline substance with makings (sic) “CLT Buy-bust”

EXH “B-1” One unsealed transparent plastic sachet containing white crystalline substance with marking “CLT possession”⁸

After the investigation, the specimens were returned to PO3 Radam, who drafted the request for laboratory examination and brought the specimens to the laboratory for testing. In the PNP Crime Laboratory, the seized specimens together with the sample urine from both the accused, were received by the receiving clerk SPO1 Durango, and turned over to Chemist April Grace Carbajal Madroño (Madroño), who conducted the laboratory tests, which all tested positive for Methamphetamine hydrochloride or *shabu*.

Evidence of the Defense

On 16 June 2004, at 1:30 p.m., Jonjong Abonitalla (Abonitalla), friend of accused Edilberto, requested accused Edilberto to buy for him *shabu* from a certain Elsa Budiongan (Budiongan), an alleged *shabu* supplier, but accused Edilberto refused. Insistent, Abonitalla instead sought the help of accused Maricel, daughter of accused Edilberto, to buy *shabu* for him. Accused Maricel agreed and proceeded to the house of Budiongan. When she returned, she handed to Abonitalla a sachet containing white crystalline substance. Thereafter, Abonitalla disclosed to accused Maricel that the PDEA was behind the request to entrap Budiongan.

After a while, PO1 Tanggote and PO3 Radam arrived, ordering her to point the location of the house of Budiongan. Upon arrival at the house, Budiongan was nowhere to be found.

Due to accused Maricel’s failure to divulge the whereabouts of Budiongan, the police officers arrested her and her father instead.

The Ruling of the Lower Courts

⁸

Records, p. 287.

The RTC and the CA rejected the defense's allegation of planting of evidence. According to the lower courts, there was no evidence that points to any irregularity in the arresting officers' exercise of duty except for the accused's bare denials of the accusations against them. It was pointed out that the arresting officers do not know the accused before their arrest and have no motive to implicate them. The CA, affirming the ruling of the RTC, relied on the principle of presumption of regularity. Such that absent ill-motive or deviation in the exercise of their duty, police officers are presumed to have exercised their duty regularly; their testimony shall prevail over the accused's allegation of frame-up.

Our Ruling

The accused contended that due to the failure without any justification of the arresting officers to substantially comply with the requirements provided in Section 21 of R.A. No. 9165, such as conducting an inventory and taking photographs of the specimen, the integrity of the *corpus delicti* has not been properly established. Further, it argued that there is a break in the chain of custody of the evidence as the prosecution failed to establish how SPO1 Amacanim preserved the specimen. The accused emphasize that SPO1 Amacanim did not testify in court.

The *Corpus Delicti*

The elements necessary for the prosecution of the illegal sale of drugs are as follows: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and payment therefor.⁹ The prosecution, to prove guilt beyond reasonable doubt, must present in evidence the *corpus delicti* of the case. The *corpus delicti* is the seized illegal drugs. This is to establish with unwavering exactitude that the seized illegal drugs from the suspect is the very same substance offered in court as exhibit.¹⁰

In the case at bar, the prosecution failed to establish that the seized substance from the accused is the same substance offered in court. As shown during the cross examination of PO1 Tanggote, he failed to identify that the evidence offered in court is the same substance he seized from the accused as the substance he marked contained markings he had no knowledge of:

⁹ *People v. Lorenzo*, G.R. No. 184760, 23 April 2010, 619 SCRA 389, 400.

¹⁰ *Sales v. People*, 602 Phil. 1047, 1056 (2009).

Q: **Who put this PDEA below of these two sachets of shabu?**

A: **I do not know, sir.**

Q: You do not know?

A: Yes, sir.

Q: It was only in your station that these items were marked?

A: Yes, sir.

Q: And it was your Investigator SPO1 Amacanim who made the markings

A: He requested me to put a marking while he¹¹ (Emphasis and underscoring supplied)

X X X X

Q: **Mr. Witness, when you recovered these two sachets of shabu at the alleged crime scene, did you attempt to open this one to confirm what is this inside?**

A: **No, sir.**

Q: **Could you tell the Court who attached this paper tape to that long sachet? Marked Exh. B-1?**

A: **I cannot recall.**

Q: **Could you also recall who attached this paper tape to the short sachet of shabu marked Exhibit B? you cannot recall also?**

A: **I think, the investigator who attached it.**

Q: It is your presumption that this paper tape was attached by your investigator because you turned it over these items to him?

A: Yes, sir.¹² (Emphases and underscoring supplied)

X X X X

Q: **Mr. Witness, you said that you recovered in the possession of the accused the long one which contained in a plastic rectangular sachet, at the time you recovered this it was placed in along sachet of shabu of long shabu?**

A: **I do not know. This is only important that we delivered this to the crime laboratory.**

Q: **To you you (sic) placed that in a plastic container containing shabu because that is not important to you in this case that is why you discarded it?**

¹¹ TSN, PO1 Tanggote, 20 February 2007, p. 24.

¹² Id. at 25.

- A: **I cannot recall because I only noticed the one sachet of shabu was recovered from her possession sir. I don't care.**
- Q: **You don't care as to the whereabouts (sic) of the cellophane container?**
- A: **Yes, sir.**
- Q: When you turned over these two sachets of shabu to Officer Amacanim because he was your evidence custodian that time?
- A: Yes, sir.
- Q: When you turned over this long sachet of shabu was still contained in that rectangular plastic cellophane?
- A: **I cannot recall. I only noticed and turned over these two sachets of shabu recovered from the possession of Maricel Balibay?**
- A: **I cannot recall whether it was placed in the cellophane or not.**¹³
(Emphases supplied and underscoring supplied)

The prosecution failed to establish the elements of the crime; the prosecution failed to establish the identity of the *corpus delicti*, much less, the identity of the *corpus delicti* with moral certainty. As We already held, when there are doubts on whether the seized substance was the same substance examined and established to be the prohibited drug, there can be no crime of illegal possession or illegal sale of a prohibited drug.¹⁴ Such is the case at bar. Failure to prove that the specimen allegedly seized from the accused was the same one presented in court is fatal to the prosecution's case.

Chain of Custody

Besides its failure to identify the *corpus delicti* with moral certainty, the prosecution also failed to establish an unbroken chain of custody. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the Comprehensive Dangerous Drugs Act of 2002, defines "chain of custody" as follows:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and times

¹³ Id. at 21-22.

¹⁴ *Valdez v. People*, 563 Phil. 934, 951-952 (2007).

when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.¹⁵

The chain of evidence is constructed by proper exhibit handling, storage, labelling and recording, and must exist from the time the evidence is found until the time it is offered in evidence.¹⁶

Besides the fact that PO1 Tanggote failed to ascertain the identity of the seized substance, the prosecution also failed to establish how SPO1 Amacanim, the investing officer, and Chemist Madroño, the laboratory technician, preserved the integrity of the substance. The prosecution failed to establish the manner of handling, storage, labelling and recording of the substance from the time it was seized until it was offered as evidence in court as the substance contained unidentified markings and sealing.¹⁷ Assuming that PO1 Tanggote's allegation that SPO1 Amacanim labeled the substance is truthful, SPO1 Amacanim and other officers who held custody of the substance should have been presented in the court to attest to such fact. Further, all other police officers who had custody of the substance, may it be briefly or otherwise, must be presented in court to attest to the allegation of PO1 Tanggote. Our ruling in *People v. Habana*,¹⁸ is instructive:

If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.¹⁹

Since the evidence custodian, SPO1 Amacanim, was not presented in court, we cannot be sure and certain that the substance offered as evidence in court was the same substance seized from the accused.

The purpose of the law in requiring the prosecution to present the testimony of the police officers who handled the substance in court is to ascertain that the integrity and identity of the substance is preserved; that the police officers and laboratory technician who handled the seized substance, undertook precautionary measures to preserve the identity and integrity of the substance.

¹⁵ *People v. Gutierrez*, 614 Phil. 285, 294 (2009).

¹⁶ *Valdez v. People*, supra at 954.

¹⁷ TSN, PO1 Tanggote, 20 February 2007, pp. 21-22.

¹⁸ G.R. No. 188900, 5 March 2010, 614 SCRA 433.

¹⁹ *Id.* at 441.

The prosecution failed to show how the seized *shabu* changed hands. Given the unique character of *shabu*, and the unavoidable multiple transmittal of the specimen to different hands, it is imperative for the officer who seized the substance from the accused to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container, which the arresting officer failed to comply.²⁰

The police officer's failure to properly seal the seized *shabu*, coupled with the failure of the prosecution to present the officer who had custody of the seized substance deprived the court of the means to ascertain the *corpus delicti* in drugs cases.

Indeed, where, as here, there was non-compliance with the requirements set forth in Section 21 of R.A. No. 9165, there can be no presumption that the official duties have been regularly performed by the police officers.

Our discussion in *People v. Lim*²¹ is *apropos*:

x x x [A]ny apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure and confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. **The failure of the agents to comply with such a requirement raises a doubt whether what was submitted for laboratory examination and presented in court was actually recovered from the appellants. It negates the presumption that official duties have been regularly performed by the PAOC-TF agents.**²² (Emphases and underscoring supplied)

In resume, PO1 Tanggote, the arresting officer, failed to identify with moral certainty the *corpus delicti*. Second, the prosecution failed to establish the presence of an unbroken chain of custody of the seized substance. Despite the failure to properly seal the seized substance, the prosecution also failed to present the testimony of the officers who held custody of the seized substance including the handling, storage, labelling and recording of the seized substance from the time it was seized until it was offered as evidence

²⁰ Id. at 440.

²¹ 435 Phil. 640 (2002).

²² Id. at 659-660.

in court to establish that there is an unbroken chain of custody of the seized substance. Third, without any justifiable reasons, the arresting officers failed to comply with the procedural requirements set forth in Section 21 of R.A. No. 9165.

Thus, taken altogether, We cannot discount the arresting officer's utter disregard of the procedural requirements, failure to establish with moral certainty the identity and integrity of the *corpus delicti*, and hiatus in the chain of custody under the cloak of the presumption of regularity.


WHEREFORE, We **SET ASIDE** the 15 February 2012 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00630-MIN affirming the judgment of conviction of the Regional Trial Court, Branch 25, Cagayan de Oro, Misamis Oriental in Criminal Case Nos. 2004-469 and 2004-470 dated 30 August 2007. We **ACQUIT** accused-appellants EDILBERTO BALIBAY y LABIS and MARICEL BALIBAY y BIJA-AN based on reasonable doubt and we **ORDER** their immediate release from detention, unless they are detained for any other lawful cause.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

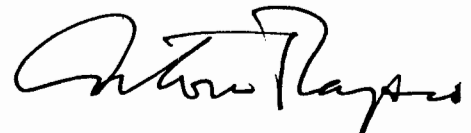
ATTESTATION

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.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.

A handwritten signature in black ink, appearing to read "Antonio T. Carpio", written in a cursive style.

ANTONIO T. CARPIO
Acting Chief Justice