



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 184789

Present:

- versus -

SERENO, C.J.,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, JJ

BEVERLY ALAGARME y
CITOY,
 Accused-Appellant.

Promulgated:

FEB 23 2015

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DECISION

BERSAMIN, J.:

The importance of the State establishing a preserved chain of custody in every criminal prosecution for the illegal sale of dangerous drugs cannot be understated. The accused cannot be pronounced guilty of the offense if all the links of the chain of custody of the drug subject of the illegal sale – the *corpus delicti* itself – are not shown. The reason is that the drug presented as evidence at the trial is not shown beyond reasonable doubt that it was the drug subject of the illegal sale.

The Case

Under review is the decision promulgated on May 28, 2008,¹ whereby the Court of Appeals (CA) affirmed the judgment rendered on September 15, 2006 in Criminal Case No. 05-568 and Criminal Case No. 05-569 by the Regional Trial Court (RTC), Branch 64, in Makati City² finding the appellant guilty beyond reasonable doubt of violations of Section 5 and

¹ *Rollo*, pp. 2-18; penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justice Vicente Q. Roxas and Associate Justice Jose Catral Mendoza (now a Member of this Court) concurring.

² *Records*, pp. 97-106.

v
 24

Section 11, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

Antecedents

The information in Criminal Case No. 05-568 charged the appellant with violation of Section 5, Article II of Republic Act No. 9165, *viz*:

That on or about the 14th day of March, 2005, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away ₱200.00 worth of Methylamphetamine Hydrochloride (Shabu) weighing zero point zero three (0.03) gram, a dangerous drug.

CONTRARY TO LAW.³

while the information in Criminal Case No. 05-569 alleged violation of Section 11, Article II of Republic Act No. 9165, as follows:

That on or about the 14th day of March, 2005, in the City of Makati Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess and/or use regulated drugs and without any license or proper prescription, did then and there willfully, unlawfully and feloniously have in her possession, custody and control Methylamphetamine Hydrochloride (Shabu) weighing zero point fifteen (0.15) gram, which is a dangerous drug, in violation of the aforesaid law.

CONTRARY TO LAW.⁴

The appellant pleaded *not guilty* to both informations.⁵

Version of the Prosecution

At the trial, the State presented as witnesses poseur buyer PO1 Percival Mendoza, and Makati Anti-Drug Abuse Council (MADAC) Operative Miguel Castillo.

The police and MADAC operatives apprehended the appellant during a buy-bust operation conducted on Guiho Street, Barangay Cembo, Makati

³ Id. at 2.

⁴ Id. at 4.

⁵ Id. at 19-20, 22.

City at around 4:40 p.m. on March 14, 2005.⁶ The buy-bust team had been formed with prior coordination with the Philippine Drug Enforcement Agency (PDEA) after P/Insp. Marietto Valerio, the Action Officer of the Station Anti-Illegal Drugs Special Operations Task Force (SAID-SOTF), had received information from a concerned citizen about the appellant,⁷ whose name was on the police watch list, engaging in the illegal sale of drugs.⁸ The buy-bust money, which consisted of two ₱100.00 bills marked with C4, the acronym for Cluster 4 of the MADAC demarcating the area of operation,⁹ was handed over to PO1 Mendoza as the designated poseur-buyer.¹⁰ The buy-bust team and the confidential informant then proceeded to the target area on board a Toyota Revo.¹¹ The informant and PO1 Mendoza alighted from the Toyota Revo upon reaching Guiho Street to await the arrival of the appellant.¹² When she finally arrived, the informant introduced PO1 Mendoza to her as someone in need of *shabu*.¹³ She asked PO1 Mendoza how much he wanted to buy.¹⁴ The latter replied: *Katorse lang po*.¹⁵ She asked for the payment; hence, PO1 Mendoza gave her the marked bills.¹⁶ Upon receiving the marked bills, she went into an alley and returned shortly thereafter with two plastic sachets containing suspected *shabu*.¹⁷ Picking one of the plastic sachets, PO1 Mendoza tucked it in his right front secret pocket, which was the pre-arranged signal to alert the rest of the buy-bust team about the consummation of the sale.¹⁸ At the same time, PO1 Mendoza held her by the hand to arrest her.¹⁹ Upon seeing the pre-arranged signal, the rest of the buy-bust team, including MADAC Operative Castillo, rushed forward, and assisted PO1 Mendoza in apprehending her. After apprising her of her constitutional rights, PO1 Mendoza asked her to empty her pockets, and when she complied, he recovered the buy-bust money from her.²⁰ He also recovered the other plastic sachet from her right hand.²¹

PO1 Mendoza required the appellant to board the Toyota Revo. It was inside the vehicle where he marked the plastic sachets with his initials PCM for the sachet subject of the sale, and PCM-1 for the sachet recovered from her right hand.²²

⁶ TSN of November 21, 2005, pp. 4-6; March 6, 2006, p. 4-5.

⁷ Records, pp. 11-12.

⁸ TSN of November 21, 2005, p. 10.

⁹ Id. at 7.

¹⁰ Id. at 5-9.

¹¹ Id. at 36-37.

¹² Id. at 11.

¹³ Id. at 12.

¹⁴ Id.

¹⁵ Id. at 13.

¹⁶ Id. at 13, 34.

¹⁷ Id.

¹⁸ Id. at 14.

¹⁹ Id. at 15.

²⁰ TSN of March 6, 2006, p. 10.

²¹ TSN of November 21, 2005, p. 15.

²² Id. at 16-17, 36.

The buy-bust team brought the appellant and the confiscated items to the office of the SAID-SOTF for documentation and investigation.²³ The team later brought her and the confiscated items to the PNP Crime Laboratory for testing and examination.²⁴ Her urine sample and the white crystalline substances contained in the two plastic sachets tested positive for methylamphetamine hydrochloride, otherwise known as *shabu*.²⁵

Version of the Defense

The appellant was the lone witness of the Defense.

The appellant denied the charges, and insisted that she had been the victim of a frame-up. According to her, she was cleaning the house of Gona Gonzales at No. 94 Guiho Street, Barangay Cembo, Makati City, for whom she worked as househelper.²⁶ She later on went out to buy rice and on her way to the store, two men approached and announced her that they were able to buy *shabu* from her.²⁷ One of the men poked his gun at her. They then brought her to the basketball court, where they frisked and ordered her to bring out the *shabu*.²⁸ They recovered money amounting to ₱180.00 from her.²⁹ They asked if she knew anyone selling *shabu*, but she answered them in the negative.³⁰ They brought her to the MADAC office where she remained for a day.³¹ She was later taken to the PNP Crime Laboratory for drug testing. She admitted using *shabu* only once, a year prior to her arrest.³²

Judgment of the RTC

On September 15, 2006, the RTC convicted the appellant of the two offenses charged, ruling:

WHEREFORE, in view of the foregoing judgment is rendered as follows:

1. In Criminal Case No. 05-568, the Court finds accused BEVERLY ALAGARME y CITOY GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act No. 9165 and sentences her to suffer LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.

²³ TSN of March 6, 2006, p. 16.

²⁴ Records, pp. 8-9.

²⁵ Id. at 10.

²⁶ TSN of July 4, 2006, p. 3.

²⁷ Id. at 4-5, 8.

²⁸ Id. at 6.

²⁹ Id.

³⁰ Id. at 7.

³¹ Id. at 9.

³² Id. at 13-14.

2. In Criminal Case No. 05-569, the Court finds the accused BEVERLY ALAGARME y CITOY GUILTY beyond reasonable doubt of the offense of Violation of Section 11, Article II, Republic Act No. 9165 and sentences her to suffer the indeterminate imprisonment of Twelve (12) years and one (1) day, as minimum to Fourteen (14) years, as maximum, and to pay a fine of THREE HUNDRED THOUSAND (₱300,000.00) PESOS.

The period during which the accused was under detention shall be considered in her favor pursuant to existing rules.

The Branch Clerk of Court is directed to submit to the Philippine Drug Enforcement Agency (PDEA) the two (2) plastic sachets of shabu with a combined weight of zero point eighteen (0.18) gram for said agency's appropriate disposition.

SO ORDERED.³³

Decision of the CA

The appellant appealed to the CA, contending that the Prosecution's patent non-compliance with the requirements under Section 21 of Republic Act No. 9165 warranted her acquittal.

On May 28, 2008, the CA affirmed the conviction of the appellant,³⁴ holding that the integrity and evidentiary value of the confiscated items had been safeguarded notwithstanding the Prosecution's failure to comply with the requirements prescribed under Section 21 of Republic Act No. 9165; and that her mere denial and unsubstantiated defenses did not overcome the presumption of regularity of the buy-bust operation over.

Issue

Did the CA err in finding the appellant guilty beyond reasonable doubt of the violations of Section 2 and Section 5, Article II of Republic Act No. 9165 charged?

Ruling

After careful examination of the records, we acquit the appellant because of the State's failure to prove her guilt beyond reasonable doubt.

³³ Records, p. 106.

³⁴ Supra note 1.

In every prosecution for the illegal sale of dangerous drugs, the presentation of the drugs as evidence in court is material,³⁵ because the identity of the drugs seized should be established beyond any reasonable doubt. What is more, the fact that the substance bought during the buy-bust operation is the same substance offered in court should be proven. The preservation of the chain of custody of the drugs seized performs the function of ensuring that unnecessary doubts attending the identity of the evidence are removed.³⁶

Section 21(1) of Republic Act No. 9165 lays down the procedure to be followed in the seizure and ensuing custody of the seized dangerous drugs, *viz.*:

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;

X X X X

Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, states:

X X X X

(a) The apprehending office/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

³⁵ *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718.

³⁶ *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

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;

X X X X

The foregoing procedure underscores the value of preserving the chain of custody in relation to the dangerous drugs. To give effect to the procedure, the Dangerous Drugs Board (DDB), which is the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy,³⁷ has defined *chain of custody* involving the dangerous drugs and other substances in Section 1(b) of DDB Regulation No. 1, Series of 2002³⁸ thusly:

b. "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 of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition; (Emphasis supplied)

With this concern for the due recording of the authorized movement and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment, the presentation as evidence in court of the dangerous drugs subject of the illegal sale is material in every prosecution for the illegal sale of dangerous drugs.³⁹ This materiality derives from the dangerous drugs being themselves the *corpus delicti*. Indeed, proof of the *corpus delicti* is essential in every judgment of conviction.⁴⁰ Without proof of the *corpus delicti*, there is uncertainty about whether the crime really transpired or not. To eliminate the uncertainty, the Prosecution should account for every link in the chain of custody; otherwise, the crime is not established beyond reasonable doubt. In other words, the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 either when the dangerous drugs are missing or when there are substantial gaps in the chain of custody of the

³⁷ Section 77, Republic Act No. 9165.

³⁸ *Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.*

³⁹ *People v. Doria*, supra, note 35.

⁴⁰ *Malillin v. People*, supra, note 36, at 631-632.

seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.⁴¹

A reading of the record indicates that the buy-bust team did not observe the procedures laid down by Republic Act No. 9165 and its IRR. The marking of the seized drugs or other related items immediately upon seizure from the accused is crucial in proving the chain of custody because it is the starting point in the custodial link. The marking upon seizure serves a two-fold function, the first being to give to succeeding handlers of the specimens a reference, and the second being to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until their disposition at the end of criminal proceedings, thereby obviating switching, “planting,” or contamination of evidence.⁴² This requirement of marking as laid down by the law was not complied with. Firstly, PO1 Mendoza simply stated that he did the marking of the confiscated items with his initials inside the Toyota Revo. Although the appellant was also inside the Toyota Revo at that time,⁴³ he did not state if his marking was done within the view of the appellant, or within the view of any representative from the media, Department of Justice or any elected public official. Secondly, both he and MADAC Operative Castillo did not indicate if any media or DOJ representative or elected public official had been present during the buy-bust operation and when the drugs were recovered from the appellant at the scene of the apprehension. The law unequivocally required such presence. Thirdly, there was also no showing of any inventory of the confiscated items being undertaken or prepared. The lack of the inventory was confirmed by the absence of any certificate of inventory being formally offered as evidence by the Prosecution.⁴⁴ Lastly, the Prosecution did not produce any photographs taken of the sachets of *shabu* immediately following their seizure.

The last paragraph of Section 21(a), Article II of the IRR of Republic Act No. 9165 provides a saving mechanism to ensure that not every case of non-compliance with the safeguards to preserve the chain of custody will irretrievably prejudice the Prosecution’s case against the accused. However, in order for such saving mechanism to apply, the Prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses.⁴⁵ Here, however, the Prosecution did not bother to show that a media representative, DOJ representative or elected public official had been notified of the buy-bust operation or, assuming that the DOJ representative or public official had been so priorly informed, the lawmen did not explain why none of such representatives was around to witness the actual marking of the evidence. Indeed, the Prosecution did not even try to

⁴¹ *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

⁴² *Id.* at 357.

⁴³ TSN of November 21, 2005, p. 36.

⁴⁴ Records, pp. 72-88.

⁴⁵ *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 270.

show that the application of the saving mechanism provided in Section 21(a), Article II of the IRR of Republic Act No. 9165 would be justified. Under the circumstances, the identification of the seized evidence in court during the trial became ambiguous *and* unreliable, rendering the proof of the links in the chain of custody of the *corpus delicti* unworthy of belief.

Where the State did not establish a preserved chain of custody of the dangerous drugs according to the statutory procedure for doing so, we have no need to review the claim of the appellant about her being framed up on trumped-up charges. In view of the presumption of her innocence, she did not need to explain her arrest for the crimes charged against her. The presumption should be overcome only by strong evidence of her guilt.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 28, 2008 by the Court of Appeals; **ACQUITS** appellant **BEVERLY ALAGARME y CITOY** on the ground of the failure of the Prosecution to establish her guilt beyond reasonable doubt; and **ORDERS** her **IMMEDIATE RELEASE** from the Correctional Institute for Women of the Bureau of Corrections, unless she is confined for another lawful cause.

The Director of the Correctional Institute for Women of the Bureau of Corrections is directed to implement this decision and to report to this Court the compliance within 10 days from receipt hereof.


SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. BERLAS-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