



Republic of the Philippines
Supreme Court

Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 205889

Present:

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

- versus -

Promulgated:

SANDER DACUMA Y LUNSOD,
Accused-Appellant.

FEB 04 2015

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DECISION

PEREZ, J.:

This is an appeal from the Decision of the Court of Appeals¹ in CA G.R. CEB CR-HC No. 00558, which affirmed the Decision² dated 17 September 2004 of the Regional Trial Court, Branch 13, Carigara, Leyte (RTC), finding the accused-appellant Sander Dacuma (Dacuma) guilty of illegal sale of *shabu* or *methamphetamine hydrochloride*, a dangerous drug, in violation of Sec. 5 of Republic Act No. 9165, otherwise known as *The Comprehensive Dangerous Drugs Act of 2002*.

On 1 September 2003, two sets of Information were filed against Dacuma for illegal sale and illegal possession of dangerous drug, committed as follow:

For Illegal Sale:

¹ Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Nina G. Antonio-Valenzuela and Victoria Isabel A. Paredes, concurring. *Rollo*, pp. 5-18.

² Presided by Presiding Judge Crisostomo L. Garrido. *CA rollo*, pp. 74-90.

That on or about the 15th day of July, 2003, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and criminally sell, dispense, deliver, transport or distribute 0.11 gram [of] Methamphetamine Hydrochloride (Shabu), a dangerous drug without being authorized by law.³

For Illegal Possession:

That on or about the 15th day of July, 2003, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously had in his possession, control and custody three (3) small heat-sealed sachets of Methamphetamine Hydrochloride (Shabu, a dangerous drug, with a total weight of 0.18 gram without the necessary permit or authority to possess the same.⁴

On 10 November 2003, Dacuma pleaded not guilty to the offenses charged against him.⁵

The prosecution presented Police Officer 2 Frederick B. Cabaltera (PO2 Cabaltera), Forensic Chemist Benjamin A. Cruto, Jr. (Forensic Chemist Cruto), PO2 Alberto Parena (PO2 Parena), PO3 Ernie B. Rocha (PO3 Rocha) and *Barangay* Councilor Allan Lesiguez (Councilor Lesiguez) as its witnesses.

On 15 July 2003, PO2 Cabaltera, certain PO3 Macalino, PO3 Baltar and PO2 Llovia, members of Anti-Illegal Drug Task Force of Leyte Provincial Police Office under the Philippine Drug Enforcement Agency (PDEA), were ordered by their superior Superintendent Brigido Basio Unay to proceed to Carigara (Leyte) Police Station to verify the veracity of a report of a confidential informant about the sale of dangerous drugs. Upon arrival at the police station at 8:00 in the evening, Chief of Police Jose Repulda gave a short briefing to conduct a buy-bust operation and gave the assigned *poseur*-buyer PO2 Cabaltera four pieces of one hundred peso bills to be used as marked money. Thereafter, PO2 Cabaltera, PO2 Parena and the confidential informant proceeded to the target area located at Esperanza St., Baybay, Carigara, Leyte. Upon arrival, PO2 Cabaltera and the confidential informant approached the accused-appellant Dacuma and proposed to buy *shabu* worth ₱600.00. Meanwhile, PO2 Parena remained at a distance to act as a back-up police officer. Dacuma, accepted the offer and

³ Records, pp. 21-22.

⁴ Id. at 19-20.

⁵ Id. at 29-30.

took from his pocket four plastic sachets containing white crystalline substance and handed them to PO2 Cabaltera, who in turn, handed the marked money including his personal money worth ₱400.00. Thereafter, PO2 Cabaltera raised his hand as pre-arranged signal to alert the back-up police officers that the illegal sale had already been consummated. PO2 Parena immediately ran towards them and introduced himself as a police officer. They then apprehended the accused and brought him to the Philippine National Police (PNP) Station of Carigara, Leyte.

Barangay Councilor Lesiguez and a certain Councilor Macalinao were summoned by the police officers to conduct a body search on the person of Dacuma inside the police station. During the search, three sachets of *shabu*, marked money and one disposable lighter were recovered from Dacuma.⁶

The version of the defense is that on the night of the arrest on 15 July 2003, he was sitting in front of a bakery when his friend Edwin Lagera (Lagera) called his attention and asked him to buy *shabu* in his stead. Due to the insistence of Lagera, Dacuma accepted the money consisting of four pieces of one hundred-peso bills with the intention of returning it to the person who gave it to them, PO2 Parena. PO2 Parena, however, did not accept the money and assured him of his non-liability. Holding to that assurance, he left the area but soon after, he was accosted and handcuffed by police officers he identified as Leo Llovía, John Talua, Baltar and PO2 Cabaltera. He was eventually charged with illegal sale and possession of dangerous drugs under Sections 5 and 11 of Republic Act No. 9165. His version was corroborated by Lagera who affirmed the same narration in open court.⁷

The Ruling of the Trial Court

The trial court on 17 September 2004 rendered a decision finding the accused guilty of illegal sale but dismissing the charge for illegal possession for insufficiency of evidence. The dispositive portion reads:

WHEREFORE, premises considered, the Court found accused SANDER DACUMA, GUILTY beyond reasonable doubt in Criminal Case No. 4319, for VIOLATION OF SECTION 5 OF R.A. [NO.] 9165, otherwise known as THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, and sentenced to suffer the maximum penalty of Life

⁶ TSN, 8 January 2004, pp. 2-11; TSN, 9 January 2004, pp. 2-7.

⁷ TSNs', 30 July 2004 and 4 August 2004, pp. 1-22.

Imprisonment, and to pay the fine of Five Hundred Thousand Pesos (P500, 000.00); and

Pay the Cost.

In Criminal Case No. 4320, the prosecution having failed to establish the quantum of proof to prove the guilt of the accused beyond reasonable doubt for VIOLATION OF SECTION 11 OF R.A. [NO.] 9165, otherwise known as THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, the same is hereby DISMISSED, for insufficiency of evidence.⁸

The trial court justified the guilty verdict against Dacuma. It was convinced that the elements of illegal sale of dangerous drug were sufficiently established by the prosecution with the necessary quantum of proof. It also recognized the presumption of performance of duties of the police officers in the absence of ill-motive against the accused. On the other hand, it dismissed the argument of self-serving alibi of frame-up as a lame defense to evade liability. Clear is the fact that the accused was caught red-handed as a result of a legitimate buy-bust operation.

The Ruling of the Court of Appeals

On 24 October 2011, the appellate court affirmed *in toto* the ruling of the trial court.

It ruled that the prosecution had presented evidence necessary to convict the accused beyond reasonable doubt. It also rejected the issue with regard to compliance with the procedure on custody and safekeeping of seized dangerous drugs due to its belated objection to admissibility. Lastly, it ruled on the dispensability of pre-trial report in a buy-bust operation, provided that all the elements to uphold commission of buy-bust are present to convict the accused.

Our Ruling

After a careful review of the evidence, we resolve to acquit the accused and reverse the ruling of conviction of both the trial court and Court of Appeals.

⁸ CA rollo, p. 90.

The following requisites are necessary in order to successfully prosecute an offense of illegal sale of dangerous drugs: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.⁹

In the prosecution of illegal sale, what is essential is to prove that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*. The consummation of sale is perfected the moment the buyer receives the drug from the seller.¹⁰ In this case, the prosecution failed to prove that the four sachets which tested positive for *shabu* and eventually presented in court were the same ones confiscated by the police officers due to its non-marking at the place where the buy-bust operation was committed at the police station.

In *People v. Nacua*,¹¹ the Court emphasized that given the unique characteristic of dangerous and illegal drugs which are indistinct, not readily identifiable, and easily susceptible to tampering, alteration, or substitution, either by accident or otherwise, there must be strict compliance with the prescribed measures during and after the seizure of dangerous drugs and related paraphernalia, during the custody and transfer thereof for examination, and at all times up to their presentation in court.

These measures are clearly defined under Section 21(1) of Republic Act No. 9165 and Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165:

Section 21(1) of Republic Act No. 9165

SEC. 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 precursor 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

⁹ *People v. Llanita*, G.R. No. 189817, 3 October 2012, 682 SCRA 288, 298 citing *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324 further citing *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 463.

¹⁰ *People v. Llanita*, *id.* at 298-299, citing *People v. Gaspar*, G.R. No. 192816, 6 July 2011, 653 SCRA 673, 686.

¹¹ G.R. No. 200165, 30 January 2013, 689 SCRA 819, 831-832.

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.

Section 21(a) of the IRR of Republic Act No. 9165:

SEC. 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 precursor 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: (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.

In *People v. Kamad*,¹² the Court enumerated the different links that the prosecution must establish to preserve the identity and integrity of the seized items: first, the **seizure and marking of the illegal drug recovered from the accused by the apprehending officer**; second, the turn over of the illegal drug seized by the apprehending officer to the investigating officer; third, the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turn over and submission of the marked illegal drug seized by the forensic chemist to the court. These requirements are necessary in order to ensure that the confiscated drug are the same ones presented in court in order to dispel unnecessary doubts as to the identity of the evidence.¹³

¹² 624 Phil. 289, 304 (2010), as cited in *People v. Watamama*, G.R. No. 194945, 30 July 2012, 677 SCRA 737, 741-742.

¹³ *People v. Sabdula*, G.R. No. 184758, 21 April 2014.

In this case, records show that the first element to establish chain of custody which is the **seizure and marking of the illegal drug recovered from the accused by the apprehending officer** is missing to establish illegal sale. In fact, no one among the prosecution witnesses testified about the marking of the four sachets subject of illegal sale. Though the police officers in their testimonies narrated that there was a buy-bust operation and they apprehended the accused red-handed, all of them failed to testify on who among them complied with the marking requirement to identify the seized items. Quite notably, the Joint Affidavit of Arrest also failed to mention that the apprehending officers marked the four sachets confiscated from Dacuma. It was only then when Police Superintendent Amado E. Marquez, Jr. sent a request for a laboratory examination to the PNP Crime Laboratory, Region 8 that the four sachets containing white crystalline substance were shown to be marked as "SD."¹⁴ These specimens eventually became the specimens tested by Forensic Chemist Cruto which resulted to a positive result of *methamphetamine hydrochloride* and presented in court as the *corpus delicti*. Clearly from the foregoing, there is a serious doubt on the identity of the *corpus delicti* presented in court as subject of illegal sale.

The importance of marking is emphasized in *People v. Salonga*:¹⁵

x x x 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 the criminal proceedings, obviating switching, planting, or contamination of evidence.

The requirement of marking is not to be taken lightly as a mere procedural error. In the recent case of *People v. Abdula*, failure to mark the plastic sachets confiscated during the buy-bust operation became the Court's basis for acquittal.

How the apprehending team could have omitted such a basic and vital procedure in the initial handling of the seized drugs truly baffles and alarms us. We point out that succeeding handlers of the specimen would use the markings as reference. If at the first or the earliest reasonably available opportunity, the apprehending team did not mark the seized items, then there was nothing to identify it later on as it passed from hand to hand. Due to the procedural lapse in the first link of the chain of

¹⁴ Records, p. 57.

¹⁵ G.R. No. 194948, 2 September 2013, 704 SCRA 536, 545.

custody, serious uncertainty hangs over the identification of the seized shabu that the prosecution introduced into evidence.

We are not unaware that the seized plastic sachet already bore the markings "BC 02-01-04" when it was examined by Forensic Chemist Jabonillo. In the absence, however, of specifics on how, when and where this marking was done and who witnessed the marking procedure, we cannot accept this marking as compliance with the required chain of custody requirement. There was also no stipulation between the parties regarding the circumstances surrounding this marking. We note in this regard that it is not enough that the seized drug be marked; the marking must likewise be made in the presence of the apprehended violator. As earlier stated, the police did not at any time ever hint that they marked the seized drug.¹⁶

In a number of cases,¹⁷ the Court sanctioned substantial compliance with the procedure to establish a chain of custody, provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending team/officers. There is a liberality on minor deviations as long as there is no gross disregard of the procedural safeguards prescribed in the substantive law. However, when serious uncertainty is generated about the identity of the seized items presented in evidence,¹⁸ liberality ceases and presumption of innocence takes precedence over substantial compliance.

While we share the same observation of the trial courts that the version of the accused was highly implausible to become worthy of belief and contrary to human experience, we cannot turn a blind eye on the presumption of innocence of the accused. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf.¹⁹ Settled is the rule that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.²⁰

¹⁶ Supra note 13.

¹⁷ *People v. Llanita*, supra note 9, at 306, citing *People v. Ara*, 623 Phil. 939, 960 (2009); *People v. Lorena*, G.R. No. 184954, 10 January 2011, 639 SCRA 139, 153; *People v. Pringas*, 558 Phil. 579, 593-594 (2007).

¹⁸ *People v. Bulotano*, G.R. No. 190177, 11 June 2014, citing *People v. Ancheta*, G.R. No. 197371, 13 June 2012, 672 SCRA 604, 617 further citing *People v. Umipang*, G.R. No. 190321, 25 April 2012, 671 SCRA 324, 355.

¹⁹ *People v. Capuno*, G.R. No. 185715, 19 January 2011, 640 SCRA 233, 242-243.


²⁰ *People v. Pepino-Consulta*, G.R. No. 191071, 28 August 2013, 704 SCRA 276, 303.


WHEREFORE, the instant appeal is **GRANTED**. Accordingly, the Decision of the Court of Appeals dated 24 October 2011 in CA-G.R. CEB CR-H.C. No. 00558 is hereby **SET ASIDE**. Accused **SANDER DACUMA y LUNSOD** 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.

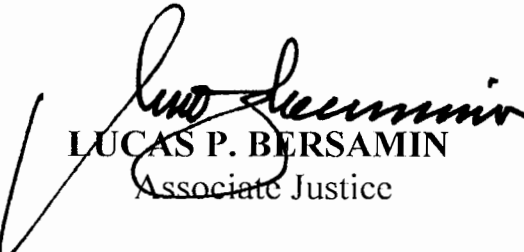
SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

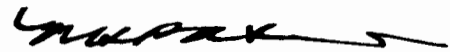

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
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