



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

G.R. No. 203293

Present:

- versus -

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

MARDAN AMERIL,

Appellant.

Promulgated:

11 4 NOV 2016

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DECISION

BRION, J.:

We resolve the appeal of accused-appellant Mardan Ameril challenging the August 8, 2011 decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01046. The CA decision affirmed the May 20, 2008 decision² of the Regional Trial Court (RTC), Branch 13, Cebu City, finding Ameril guilty beyond reasonable doubt of illegal sale of shabu, in violation of Article II, Section 5 of R.A. No. 9165.³

THE CASE

The prosecution evidence established that at around 11:45 P.M. on May 24, 2005, a confidential informant reported to the office of the Criminal Investigation and Intelligence Bureau (CIIB) that Ameril was going to sell

* On Official Leave.

¹ Rollo, pp. 2-11; penned by Associate Justice Edgardo L. Delos Santos concurred in by Associate Justice Ramon Paul L. Hernando and Associate Justice Victoria Isabel A. Paredes.

² CA rollo, pp. 56-61; by Presiding Judge Meinrado P. Paredes.

³ Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

him three (3) packs of *shabu* worth ₱9,000.00 each. Thereafter, PO3 Cesar **Pandong** formed and dispatched a buy-bust team composed of himself, PO3 Olmedo, PO3 **Salazar** and PO2 **Ilagan**. After the necessary preparations and coordination with the Philippine Drug Enforcement Agency (PDEA), Pandong's team and the informant proceeded to the target area. The informant was to act as the poseur-buyer.

At about 12:30 A.M. of the following day, the buy-bust team arrived in front of the lodging house where Ameril and his family were staying. The poseur-buyer positioned himself across the lodging house and the police officers hid behind a cargo truck, parked five (5) to seven (7) meters away from the meeting point. Since the street was part of a commercial area, the area was well lit. When everyone was in position, the informant whistled and, minutes later, Ameril came downstairs.

During their conversation, the informant showed Ameril the boodle money. Ameril then went upstairs to his apartment. When he came back, Ameril gave the three (3) packs of *shabu* to the poseur-buyer who, in turn, handed him the boodle money.

The poseur-buyer immediately gave the prearranged signal by touching his head alerting the police officers to come forward to arrest Ameril. PO3 Pandong and PO2 Salazar rushed to where Ameril and the poseur-buyer were and announced that they were policemen. Ameril attempted to flee by entering his apartment but was caught at the third floor before he could open the door of his unit. The police officers informed Ameril of his constitutional rights and the reason for his arrest. PO2 Ilagan recovered the three (3) packs of *shabu*, while PO3 Salazar recovered the boodle money.

Thereafter, the seized packets were marked "BB-MA-1" to "BB-MA-3." The team brought Ameril and the seized evidence to the CIIB and the necessary records were entered in the police blotter. The confiscated drugs were turned over to the PNP Crime Laboratory where its contents were tested. The chemistry report showed the contents of three (3) sachets resulted positive for methamphetamine hydrochloride, commonly known as *shabu*.

On the other hand, the defense presented as witnesses **Anisah** Ameril, **Aida** Ameril, and **Aquillah** Ameril, the accused-appellant's daughter, wife, and niece, respectively. All of them testified that no buy-bust operation took place. Their testimonies narrated that Ameril and his family were about to sleep when two police officers knocked on their door and asked to personally speak to Ameril. They talked in the kitchen without Anisah, Aida or Aquillah hearing what the conversation was about. After a few minutes, Ameril was invited to the police headquarters, allegedly for questioning. He complied and went with the police officers.



After over three (3) hours, Ameril called to inform them that he was under detention at the Gorordo Police Station. Aida, Anisah, and Aquilla all went to the police station. Ameril informed them that the police officers had accused him of selling illegal drugs and demanded ₱250,000.00 from him to settle the matter.

On May 28, 2008, after trial on the merits, the RTC convicted the accused beyond reasonable doubt of illegal sale of dangerous drugs as the testimonies of the police officers clearly established all its elements. The trial court accorded credit to the testimony of the prosecution's witnesses and applied the presumption of regularity in the performance of duty to the police officers in the entrapment and arrest of Ameril. Accordingly, the RTC sentenced the accused to suffer the penalty of life imprisonment and ordered to pay a fine of ₱700,000.00.

On appeal, the CA affirmed the RTC decision. The appellate court examined the evidence on record and concluded that the integrity and evidentiary value of the seized drugs had been preserved. It also stressed that such evidence is presumed to have been preserved in the absence of any showing of bad faith, ill will, or proof that the evidence has been tampered with. In addition, the CA considered the defenses of denial and frame-up inherently weak and thus did not give it credit. Lastly, the CA upheld the presumption of regularity in the performance of official duties that the RTC applied in the law enforcers' favor.

Faced with the CA's ruling, Ameril filed the present appeal before this Court.

OUR RULING

After due consideration, we **REVERSE** and **SET ASIDE** the CA's decision and **ACQUIT** the accused on grounds of reasonable doubt.

I. For an accused to be convicted in illegal drug cases, the prosecution must establish all the elements of the offenses charged, as well as the corpus delicti or the dangerous drug itself.

In cases involving illegal sale of drugs, the prosecution must establish the following elements: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment.⁴ What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*.⁵

⁴ *People v. Opiana*, G.R. No. 200797, January 12, 2015, 745 SCRA 144, 151-152.

⁵ *People v. Catalan*, G.R. No. 189330, November 28, 2012, 686 SCRA 631, 638.

The *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale – the prohibited or regulated drug – has been preserved.⁶ Evidence must show that the illegal drug presented in court is the same illegal drug actually recovered from the accused.⁷ If the prosecution fails to discharge this burden, it fails to establish an element of the offense charged and thus, an acquittal should follow.

The prosecution failed to discharge this duty in this case.

a. *The 'Marking' Requirement vis-a-vis the Chain of Custody Rule*

Chain of custody is defined 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." 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.⁸

Marking the seized drugs or other related items immediately after being seized from the accused is a *crucial step* to establish chain of custody.

"Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized to identify it as the subject matter of the prohibited sale. Marking after seizure is the starting point in the custodial link and is vital to be immediately undertaken because succeeding handlers of the specimens will use the markings as reference.⁹ 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, thus preventing switching, planting, or contamination of evidence.¹⁰

In the present case, from the very start, *i.e.*, at the point of marking, the prosecution already advanced conflicting testimonies on who made the actual markings and fully failed to explain the discrepancies. In his direct testimony, PO3 Salazar – one of the buy-bust team members – claimed that it was the investigator who marked the sachets. His testimony ran as follows:

⁶ *People v. Nuarin*, G.R. No. 188698, July 22, 2015, 763 SCRA 504, 510.

⁷ *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 268.

⁸ Dangerous Drugs Board Regulation No. 1, Series of 2002.

⁹ *Supra* note 6, at 513.

¹⁰ *Ibid.*

PROSECUTOR AIDA SANCHEZ:

Q: Mr. Salazar, during the last time that you were presented you testified that in exchange for the boodle money together with the genuine three P100.00 bills the accused handed something to your poseur-buyer; what is that something that was handed by the accused to your poseur buyer?

PO3 SALAZAR:

A: The white crystalline substance placed in a transparent plastic pack.

Q: If shown these items again, would you still be able to identify them?

A: Yes, Ma'am.

Q: And what would be your basis?

A: It was marked by the investigator.¹¹

On the other hand, contrary to PO3 Salazar's testimony, PO2 Ilagan claimed in his direct testimony that he himself made the markings, thus:

PROSECUTOR JOSE NATHANIEL S. ANDAL:

Q: Last time you testified, Mr. Witness, that in the course of your buy-bust operation your team was able to buy three transparent plastic packets of white crystalline substance from the accused. The same were turned over to the PNP Crime Laboratory for examination. If those three packs of white crystalline substance are shown to you, will you be able to identify them?

PO2 ILAGAN:

A: Yes, I can, Sir, because of the markings.

Q: What markings are you referring to?

A: BB-MA-1 to BB-MA-3.

Q: Who made that marking?

A: Myself.¹²

For some reason, the prosecution simply failed to reconcile its witnesses' conflicting statements. Inevitably, these glaring contradictions cast doubt on the identity and integrity of the evidence against Ameril.

The well-settled rule is that immaterial and significant inconsistencies do not discredit a testimony on the very material and significant point

¹¹ TSN, February 14, 2006, pp. 2-3.

¹² TSN, July 25, 2007, pp. 2-3.

bearing on the very act of the accused.¹³ The reverse side of this rule is that inconsistencies on points that are material to the prosecution of the accused shall, to some extent, discredit a testimony. Where the conflict is on an issue as basic as the marking of the seized drugs for their subsequent identification, the unexplained and unremedied flaw in the prosecution's case can be fatal.

In the present case, PO3 Salazar and PO2 Ilagan's testimonies on who marked the seized narcotics are undeniably indispensable to the successful prosecution of Ameril. The inconsistencies relate to no less than the *corpus delicti*.

We also found that there is a dearth of evidence on the circumstances of the marking, particularly on **when and where the seized narcotics were marked**. The prosecution witnesses, in their testimonies, failed to introduce any evidence as to the approximate time and place where the marking was made. In *People vs. Sanchez*,¹⁴ we held that the marking of the seized items to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence should be done immediately upon confiscation. We consider this failure on the prosecution's part as fatal to their case.

Similarly, the prosecution's evidence is deafeningly silent as to whether or not the **marking was made in Ameril's presence**. Jurisprudence states that the marking should be made in the presence of the accused in order to ensure the identity and integrity of the confiscated drugs. The prosecution evidence is likewise lacking on this point.

We emphasize that the succeeding handlers of the seized drugs will use the markings as reference. If, at the first instance or opportunity, doubts already exist on who had actually marked the seized sachets (or if the markings had been made in accordance with the required procedures), serious uncertainty cannot be avoided and must necessarily hang over the identification of the seized *shabu* that the prosecution introduced into evidence.¹⁵ In fact, in the light of the defense of frame-up that Ameril claimed, the question that arises is: was there an actual seizure of prohibited drugs as the police claimed?

b. *The inventory and photography requirement*

Section 21(1) of R.A. No. 9165 requires that:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory**

¹³ See *People v. Dadao*, G.R. No. 201860, January 22, 2014, 714 SCRA 524, 537, citing *Avelino v. People*, G.R. No. 181444, July 17, 2013, 701 SCRA 477, 479.

¹⁴ 590 Phil. 214, 241 (2008).

¹⁵ *Supra* note 6, at 513.



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]

The records of this case are likewise bereft of documents showing that the police officers made a physical inventory and took photos of the seized prohibited drugs. Likewise, no police officer testified that an inventory of the confiscated packets of *shabu* were made and photos of which were taken. The prosecution, in fact, has not even explained why Section 21 of R.A. No. 9165 has not been faithfully complied with.

Jurisprudence is replete with cases which heavily stress the importance of complying with the required procedures of Section 21 of R.A. 9165, as well as cases showing that strict compliance may be excused if the deficiency is recognized and explained by the prosecution to prove that the integrity of the seized drugs has been preserved.¹⁶ Where deficiencies are blatant and are unexplained, the Court does not hesitate to acquit the accused as we did in *People vs Garcia*¹⁷ and *People vs. Robles*¹⁸ where the police officers failed to make an inventory and to take photos of the seized narcotics as required by law.

II. The Presumption of Regular Performance of Official Duty

The CA upheld the presumption of regularity that the trial court accorded on the police officers' action in the buy-bust operation, seizure of drugs and arrest of Ameril, and ruled that there is an absence of clear and convincing evidence suggesting any ill motive or bad faith on the part of the police.

We disagree with the CA ruling.

In *People v. Coreche*,¹⁹ we ruled that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties.²⁰

While the evidence on record shows that the packets of *shabu* were indeed marked, we reiterate that nothing shows when and where the marking was done. In addition, no evidence was ever presented to show compliance by the police officers with the mandate of Section 21 (1) of R.A. 9165.

¹⁶ *People v. Abdula*, G.R. No. 184758, April 21, 2014, p. 10, citing *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 272-273.

¹⁷ G.R. No. 173480, February 25, 2009, 580 SCRA 259.

¹⁸ G.R. No. 177220, April 24, 2009, 586 SCRA 647.

¹⁹ G.R. No. 182528, August 14, 2009, 596 SCRA 350.

²⁰ *Id.* at 357-358.

The police officers testified only as to the following: (1) after arresting Ameril, PO3 Salazar retrieved the buy-bust money and PO2 Ilagan retrieved the *shabu*; (2) the investigator prepared a request to test the contents of packets marked BB-MA-1 to BB-MA-3; and (3) the contents tested positive for methamphetamine hydrochloride.

In addition, the police failed to conduct an inventory and to photograph the seized drugs.

These irregularities, which give rise to the conclusion that the police officers disregarded the requirements of law and jurisprudence, serve as sufficient reasons to rebut the presumption of regularity in the performance of official duties. Notably, the prosecution did not offer any explanation or justification for the failure of the police to comply with the mandatory requirements of Section 21 of R.A. 9165 and its implementing rules.

More importantly, the presumption of regularity in the performance of official duties is inferior to and cannot defeat the constitutional presumption of innocence.²¹ This is particularly true when attendant irregularities exist in the police operations – as in the present case.

All told, the totality of evidence against Ameril cannot support his conviction for violation of Section 5, Article II of R.A. 9165. The prosecution's failure to comply with Section 21, Article II of R.A. 9165 and with the chain of custody requirement compromised the identity and evidentiary value of the seized packs of *shabu*. Following the constitutional mandate, when the guilt of the accused has not been proven with moral certainty, the presumption of innocence prevails and his exoneration should follow.

WHEREFORE, in the light of all these premises, we **REVERSE** and **SET ASIDE** the August 8, 2011 decision of the Court of Appeals in CA-G.R. CR-HC No. 01046. Accused-appellant Mardan Ameril is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention unless he is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.



ARTURO D. BRION
Associate Justice

²¹ See *People v. Cañete*, G.R. No. 138400, July 11, 2002, 384 SCRA 411, 413.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice

(On Official Leave)

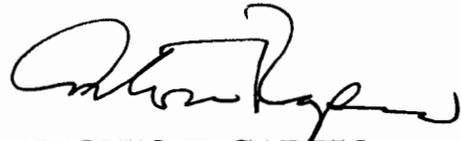
JOSE CATRAL MENDOZA
Associate Justice



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

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

