



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 201576**

Present:

- versus -

**BERSAMIN, C.J.,**  
*Chairperson,*  
**DEL CASTILLO,\***  
**GESMUNDO,**  
**CARANDANG, and**  
**JAVIER,\*\* JJ.**

**ANALYN ADVINCULA y PIEDAD,**  
 Accused-Appellant.

Promulgated:

**JUL 22 2019**

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**DECISION**

**CARANDANG, J.:**

This is an appeal of the Decision<sup>1</sup> dated October 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04260 dismissing the appeal and affirming the Decision<sup>2</sup> dated November 25, 2009 of the Regional Trial Court (RTC) of Manila, Branch 2, convicting Analyn Advincula y Piedad (accused-appellant) of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.<sup>3</sup>

**The Factual Antecedents**

This case stemmed from an Information<sup>4</sup> in Criminal Case No. 09-266519, charging accused-appellant with violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

\* On official leave.

\*\* Designated additional member per Raffle dated April 1, 2019.

<sup>1</sup> Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Normandie B. Pizarro (now retired) and Rodil V. Zalameda (now a Member of this Court), concurring; *rollo*, pp. 2-14.

<sup>2</sup> Records, pp. 29-34.

<sup>3</sup> An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6424, otherwise known as the Dangerous Drugs Act of 1972, as amended, Providing Funds Therefor, and for Other Purposes.

<sup>4</sup> Records, p. 1.

That on or about February 5, 2009, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing ZERO POINT ZERO ZERO EIGHT (0.008) [gram] of white crystalline substance, containing methylamphetamine hydrochloride known as “shabu”, a dangerous drug.

The evidence for the prosecution shows that acting on an information from a civilian informant (CI), Police Sub Inspector (PSI) Johnny Gaspar planned a buy-bust operation against accused-appellant alias “Potsie” who was allegedly engaged in selling illegal drugs at Oroquieta Street, Sta. Cruz, Manila. Police Officer 2 (PO2) Jackson Caballero (PO2 Caballero) was designated as the poseur-buyer. One ₱200.00 bill was marked with a dot on the nose of former president Diosdado Macapagal according to the Pre-Operation Report and Coordination Form prepared by PO2 Ireneo Salazar.

PO2 Caballero, PO2 Reynaldo Mallari, and the CI proceeded to the target area. Upon arrival thereat, the CI pointed accused-appellant to the policemen. PO2 Caballero approached accused-appellant and told her that he will buy *shabu*. Accused-appellant asked PO2 Caballero how much he intends to buy. PO2 Caballero answered he wants to buy ₱200.00 worth of *shabu*. He handed the marked money to accused-appellant who took from her pocket one plastic sachet containing white crystalline substance suspected to be *shabu*. Accused-appellant handed said plastic sachet to PO2 Caballero who immediately executed the pre-arranged signal by removing his cap. PO2 Caballero introduced himself as a police officer and arrested accused-appellant. While at the crime scene, PO2 Caballero marked the plastic sachet with the initials of accused or “AAP” in the presence of accused-appellant and the other police officers. PO2 Caballero then placed the heat-sealed transparent plastic sachet containing 0.008 grams of white crystalline substance suspected to be *shabu* inside his left pocket as they proceeded to the police precinct.

Qualitative examination conducted on the confiscated item gave positive result to the tests for methamphetamine hydrochloride or *shabu*.<sup>5</sup>

During pre-trial, the parties stipulated on the qualification of Police Inspector (P/Insp.) Erickson L. Calabocal as a Forensic Chemist, the genuineness and due execution of the documents (letter request for laboratory examination, one heat-sealed transparent plastic sachet with marking “AAP”, small brown envelope, and the Final Chemistry Report) brought by him together with the specimen.

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<sup>5</sup> Id. at 10; Exhibit C-1.



For her defense, accused-appellant testified that on February 5, 2009, she and her daughter were sitting in her husband's parked "kuliglig" when two policemen arrived and invited her to the precinct. At the precinct, the police asked for her name and detained her. During cross-examination, accused-appellant testified that her alias is "Potchi."

### **Ruling of the Regional Trial Court**

In the Decision dated November 25, 2009, the trial court found accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and imposed upon her the penalty of life imprisonment with a fine of ₱500,000.00.

The trial court ruled that absent any showing of any ill motive on the part of PO2 Caballero in testifying against accused-appellant, the testimony of the arresting officer deserves full faith and credit. Accused-appellant's claim that without committing any wrong, she was just arrested and charged by the police remained unsubstantiated. Evidence to be believed must not only come from a credible witness but must in itself be credible. Furthermore, the seizure of the dangerous drugs made by the buy-bust team falls under a search incidental to a lawful arrest under Section 13, Rule 126 of the Revised Rules of Criminal Procedure. Lastly, the defense of denial by the accused-appellant cannot prevail over the positive identification of accused-appellant made by police officers as the one caught in illegal sale of the dangerous drugs.

### **Ruling of the Court of Appeals**

In the assailed Decision, the CA affirmed *in toto* the trial court Decision.

The CA, in affirming the conviction of accused-appellant, held that the failure of the prosecution to show how the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, does not automatically render accused-appellant arrest illegal or the items seized from her inadmissible. The prosecution was able to preserve the integrity and evidentiary value of the illegal drugs because the chain of custody did not appear to be broken and the recovery and handling of the seized drugs were satisfactorily established.

Hence, this appeal which raises the sole issue of whether the guilt of accused-appellant was proven beyond reasonable doubt. Both the accused-appellant and the State, through the Office of the Solicitor General (OSG), manifested that they are adopting their respective Briefs previously filed with the CA.

Accused-appellant argues that the prosecution failed to establish compliance with the indispensable requirement of proving the *corpus delicti* due to substantial gaps in the chain of custody of the seized drug subject of

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this case. She likewise contends that the prosecution failed to prove compliance with the statutory safeguards provided for in Section 21(1) of R.A. No. 9165 which casts doubts on the integrity and authenticity of the evidence subjected to laboratory examination and those presented in court.

### **Ruling of the Court**

The appeal is meritorious.

Basic is the rule that, for a conviction of the crime of illegal sale of dangerous drugs to stand, the prosecution should have proven the following elements beyond reasonable doubt: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and payment. The prosecution has the burden to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*.<sup>6</sup>

Through the testimony of PO2 Caballero, who acted as the poseur-buyer, the prosecution established that a buy-bust team was formed after an information was received from a confidential informant regarding accused-appellant's illegal drug trade activity. At the target area, the CI pointed accused-appellant to the police officers. PO2 Caballero then approached accused-appellant and told her he wanted to buy *shabu*. When asked how much he would buy, PO2 Caballero answered ₱200.00 worth of *shabu*. PO2 Caballero then handed the marked money to accused-appellant who in turn gave him a plastic sachet containing suspected *shabu*. Upon consummation of the sale, PO2 Caballero executed the pre-arranged signal and effected the arrest of accused-appellant.

From the foregoing, it may be said that the prosecution has sufficiently established (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. However, as will be discussed below, the prosecution must also prove beyond reasonable doubt the integrity and preservation of the *corpus delicti* – the confiscated *shabu*.

After judicious review of the records, this Court finds that the CA erred in simply relying on the prosecution's claim that the integrity of the evidence was preserved in accordance with the chain of custody requirements for proper handling of the drug specimen.

The Court has ruled that even when the illegal sale of a dangerous drug was proven by the prosecution, the latter is still burdened to prove the integrity of the *corpus delicti*.<sup>7</sup> It is important that the State establishes with moral certainty the integrity and identity of the illicit drugs sold as the same as those

<sup>6</sup> *People v. Otico*, G.R. No. 231133, June 6, 2018.

<sup>7</sup> *People v. Alvarado*, G.R. No. 234048, April 23, 2018.

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examined in the laboratory and subsequently presented in court as evidence.<sup>8</sup> This rigorous requirement, known under R.A. No. 9165 as the chain of custody, ensures that unnecessary doubts concerning the identity of the evidence are removed.<sup>9</sup> Failure to prove the preservation of the integrity of the *corpus delicti* in dangerous drugs cases will lead to the acquittal of the accused on the ground of reasonable doubt.<sup>10</sup>

In order to remove all doubts concerning the identity of the evidence, the prosecution must establish to the very least substantial compliance with the chain of custody requirement. Section 1(b) of Dangerous Drug Board (DDB) Regulation No. 1, Series of 2002, defines chain of custody as follows:

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 used in court as evidence, and the final disposition[.]

The links in the chain of custody that must be established by the prosecution was summarized in the case of *People v. Kamad*:<sup>11</sup>

[F]irst, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

In this case, PO2 Caballero testified on the chain of custody as follows:  
ACP YAP

Q So, tell us what happened?

A When we arrived (*sic*) the location our confidential informant spotted the subject and he pointed to us and I approached the subject and I made the negotiation, sir.

Q Tell us in what way you made the negotiation?

A I told him—"Pagbilhan ako ng item n'ya".



<sup>8</sup> *People v. Ga-a*, G.R. No. 222559, June 6, 2018, citing *People v. Del Mundo*, G.R. No. 208095, September 20, 2017.

<sup>9</sup> *Id.*, citing *People v. Dahil*, 750 Phil. 212, 226 (2015).

<sup>10</sup> *People v. Caiz*, 790 Phil. 183, 204 (2016), citing *People v. Rosialda*, 643 Phil. 712 (2010).

<sup>11</sup> 624 Phil. 289 (2010).

- Q What introduction if there was any?
- A In natural way, sir, I will buy illegal drugs from the suspect.
- Q So, what was (*sic*) the suspect did?
- A Then, he asked how much then I told the suspect ₱200, sir.
- Q So, what did you do?
- A I handed the ₱200 to the suspect, sir.
- Q So, what happened to the ₱200 after it was turned over?
- A Then, using the left hand the suspect got the money, sir.
- Q Then?
- A And then, after getting the money the suspect got something from the right pocket, sit (*sic*).
- Q And then, what happened? What was that he pulled out?
- A It was one small transparent heat-sealed plastic sachet containing white crystalline substance suspected to be shabu, sir.
- Q Why did he give it to you, handed it over to you?
- A He gave it to me, sir.
- Q So, what did you do next, Mr. Witness?
- A Upon the consummation of the transaction I made the pre-arranged signal, sir.
- Q What was the pre-arranged signal?
- A By removing my cap, sir.
- Q So, what happened next, Mr. Witness?
- A Then, after the pre-arranged signal I introduced myself to the subject and I arrested him, sir.
- Q Who assisted you?
- A At that time PO Reynaldo Mallari, sir.
- Q So, what happened next, Mr. Witness, after that (*sic*)?
- A So, after the negotiation and did (*sic*) everything we proceeded to our station, sir..., I marked the said item on (*sic*) the place, sir.
- Q When did you mark (*sic*)?



A At that time, sir, when I arrested the subject.

Q What was the marking?

A AAP, sir.

Q Where did you get this abbreviation, initial? What did you mean by that?

A Analyln Advincula Piedad, sir.

Q Where was Analyln then at that time?

A In front of her, sir.

x x x x

Q After marking where did you put, place the said evidence?

A At my left front pocket, sir.

Q Who submitted that to the investigator?

A I, myself, sir.<sup>12</sup>

Although PO2 Caballero testified with regard to the seizure and marking of the illegal drug recovered from the accused-appellant and his turnover of the illegal drug seized to the investigating officer, he failed to establish the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination. First, PO2 Caballero did not name the investigator but the Spot Report<sup>13</sup> submitted by the prosecution shows that the investigator was PO2 Ireneo Salazar. However, as can be gleaned from the Request for Laboratory Examination,<sup>14</sup> the request and the specimen were delivered to the crime laboratory by PSI Johnny Gaspar and received by Forensic Chemist PSI Erickson Calabocal. Thus, there is a missing link as to how the specimen came into the possession of PSI Gaspar. It must be emphasized that neither PO2 Ireneo Salazar nor PSI Gaspar was presented as witness by the prosecution. PO2 Caballero did not have personal knowledge as to the handling of the seized drug after he turned over the same to the investigator. Hence, his testimony is insufficient to establish the unbroken link in the chain of custody. Consequently, the prosecution failed to prove that the item confiscated by PO2 Caballero is the same item presented in court.

PO2 Caballero further testified during cross-examination:

ATTY. CIRILO:

Q You said that you were able to how many plastic sachets you were able to recover from her?

<sup>12</sup> TSN dated October 22, 2009, pp. 7-9.

<sup>13</sup> Records, p. 8.

<sup>14</sup> Id. at 9; Exhibit A.

- A One plastic sachet, ma'am.
- Q And that you marked the..., where did you mark the plastic sachet?
- A At the place of arrest, ma'am.
- Q And who were with you at that time that the marking was made?
- A PO2 Reynaldo Mallari, ma'am.
- Q And that there were no other persons present aside from you and Mallari at that time that the specimen was marked?
- A The neighbors, ma'am.
- Q That there was no Barangay Kagawad present?
- A No, ma'am.
- Q Am I correct?
- A Yes, ma'am
- Q There was no photograph taken on the accused and the dangerous drug recovered from...?
- A Yes, ma'am.
- Q There was no inventory?
- A None, ma'am.
- Q And you did not bring Analyn to the hospital when you arrested her, you immediately proceeded to the station? Yes or no, Mr. Witness?
- A Yes, ma'am.<sup>15</sup>

Section 21, Article II of R.A. No. 9165 states the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. This section was amended by R.A. No. 10640 which imposed less stringent requirements in the procedure; but the amendment was approved only on July 15, 2014.<sup>16</sup> As the crime in this case was committed on February 9, 2009, the original version of Section 21 is applicable, thus:

*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 precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so

<sup>15</sup> TSN, dated October 22, 2009, p. 12.

<sup>16</sup> *People v. Sood*, G.R. No. 227394, June 6, 2018.

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

The presence of the three witnesses required by Section 21 is precisely to protect and to guard against the pernicious practice of policemen in planting evidence. Without the insulating presence of the three witnesses during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the seized drugs that were evidence of the *corpus delicti*, and thus adversely affecting the trustworthiness of the incrimination of accused-appellant.<sup>17</sup>

In cases of non-compliance with the procedure for inventory and photographing, Section 21(a), Article II of the IRR of R.A. No. 9165 imposed the twin requirements of *first*, there should be justifiable grounds for the non-compliance, and *second*, the integrity and the evidentiary value of the seized items should be properly preserved. Failure to show these two conditions renders void and invalid the seizure of and custody of the seized drugs, thus:

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.**<sup>18</sup> (Emphasis in the original)

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In the case at bar, the lapses of the arresting police officers are significant and cannot be ignored. There was no photograph and inventory of

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<sup>17</sup> Id.

<sup>18</sup> Id.

the seized items, and no representatives from the Department of Justice (DOJ) and the media, and any elected public official during the marking of the *shabu*. Furthermore, no explanation/justification was given by the buy-bust team why they did not comply or observe the rule laid down in Section 21.

With a broken chain of custody together with the non-compliance by the police officers of Section 21 cited above, there is serious doubt on the integrity of the *corpus delicti* which constitutes a fatal procedural flaw that destroys the reliability of the *corpus delicti*.<sup>19</sup>

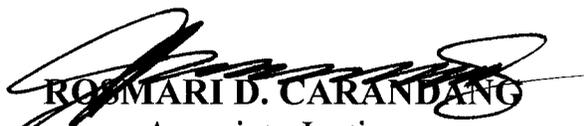
Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of custody, We cannot presume that the police officers performed their duty regularly.<sup>20</sup> The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.<sup>21</sup> And even in that instance, the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. All in all, the proof adduced against accused-appellant was not sufficient to overcome the presumption of innocence.

For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from accused-appellant, acquittal is in order.

**WHEREFORE**, premises considered, the Appeal is hereby **GRANTED**. The Decision dated October 28, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 04260 is hereby **SET ASIDE**. Accused-appellant Analyn Advincula y Piedad is hereby **ACQUITTED** and **ORDERED** to be immediately **RELEASED** from detention unless she is confined for any other lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections for immediate implementation, and is **DIRECTED** to report to the Court, within five (5) days from receipt of this Decision, the action taken.

**SO ORDERED.**

  
**ROSMARI D. CARANDANG**  
Associate Justice

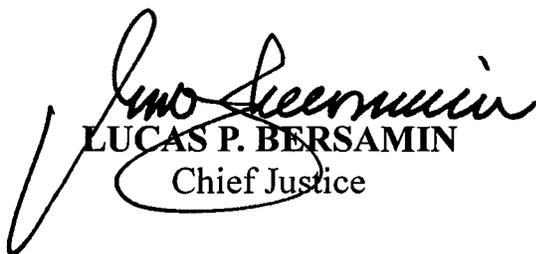
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<sup>19</sup> *Supra* note 6.

<sup>20</sup> See *Lescano v. People*, 778 Phil. 460 (2016).

<sup>21</sup> *People v. Reyes*, 797 Phil. 671, 692 (2016).

**WE CONCUR:**

  
**LUCAS P. BERSAMIN**  
Chief Justice

(On official leave)  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
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.



LUCAS P. BERSAMIN  
Chief Justice