



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 8, 2020**, which reads as follows:

“G.R. No. 238827 (*People of the Philippines v. Solimar Barcenas y Garcia a.k.a. “Nay”*). – On appeal is the Decision¹ dated August 8, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08685, affirming the Decision² dated September 21, 2016 of the Regional Trial Court (RTC) of Manila, Branch 2, convicting accused-appellant Solimar Barcenas y Garcia, a.k.a “Nay” (Barcenas) of violating Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Facts of the Case

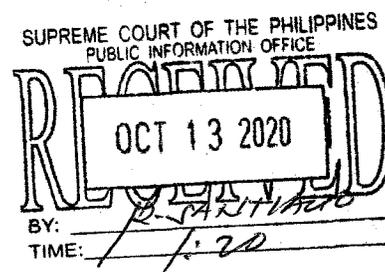
In the morning of January 25, 2014, a confidential informant reported to SPO2 Rommel Rey that he had a drug deal with a certain “Nay.” “Nay” was later identified as Barcenas. Pursuant to this report, a buy-bust operation was planned. PO1 Joner Delos Santos (PO1 Delos Santos) was the designated *poseur*-buyer tasked to buy ₱200.00 worth of *shabu* from Barcenas. PO1 Delos Santos placed the marking “J” on the buy-bust money. After planning and coordinating with the Philippine Drug Enforcement Agency, the buy-bust team proceeded to the target area at Sobreidad St., corner Marzan St., Sampaloc, Manila.³

The confidential informant approached Barcenas and introduced PO1 Delos Santos as a friend interested in buying a sample of *shabu*. PO1 Delos Santos handed the ₱200.00 buy-bust money to Barcenas. Barcenas received the ₱200.00 buy-bust money and inserted it in her right hand pocket. From the same pocket, Barcenas took out one small heat-sealed transparent plastic sachet containing white crystalline substance. Barcenas gave the plastic sachet to PO1 Delos Santos. When PO1 Delos Santos was about to execute

¹ Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Magdangal M. De Leon and Franchito N. Diamante, concurring; *rollo*, pp. 2-14.

² Penned by Presiding Judge Sarah Alma M. Lim; *CA rollo*, pp. 45-50.

³ *Rollo*, pp. 3-4.



the pre-arranged signal, a certain Alfin Abid (Abid) approached Barcenas and asked “*Meron ba tayo dyan Nay?*” Barcenas answered “*Meron,*” then she took out from her right front pocket another plastic sachet and handed the same to Abid. PO1 Delos Santos finally executed the pre-arranged signal by removing his bull cap. When Barcenas and Alfin Abid noticed the approaching police officers, the two tried to escape but PO1 Delos Santos managed to immediately grab them. This was approximately at 4:00 p.m. of the same day.⁴ PO1 Delos Santos introduced himself as a police officer and recovered from Abid’s right hand one plastic sachet. PO1 Delos Santos ordered Abid and Barcenas to empty their pockets. PO1 Delos Santos recovered from Barcenas the buy-bust money.⁵

The marking of seized items was conducted at the house of a barangay kagawad located at the corner of Sobriedad St., which was just near the place of arrest. The marking “SM” was placed on the plastic sachet of *shabu* sold by Barcenas, while the marking “SM1” was placed on the plastic sachet of *shabu* recovered from Abid. Inventory was conducted in the presence of Barangay Kagawad Carlino Palanca (Kagawad Palanca), the owner of the house, where the marking and inventory took place. Photographs during inventory were likewise taken.⁶

Thereafter, the team proceeded to the police station. PO1 Delos Santos turned over the seized items to police investigator PO2 Voltaire Yap (PO2 Yap), as evidenced by the Chain of Custody Form.⁷ The seized items were subsequently brought by both PO1 Delos Santos and PO2 Yap to the crime laboratory for qualitative examination. Per Chemistry Report No. D-045-14⁸ issued by Forensic Chemist Police Chief Inspector Elisa G. Reyes-Arturo (PCI Reyes-Arturo), the white crystalline substance inside the two plastic sachets tested positive for Methamphetamine Hydrochloride or *shabu*.

The defense presented the sole testimony of Barcenas. According to Barcenas, she was with her mother and her sister in their store on January 25, 2014. While she was arranging the food to be sold for *merienda*, a red vehicle stopped in front of the store and two men alighted therefrom. They introduced themselves as police officers and invited Barcenas to the precinct. She accepted the invitation. Barcenas was then brought to Police Station 4.⁹ She was later indicted for violating Section 5, Article II of R.A. 9165. The Information¹⁰ filed against Barcenas reads:

That on or about January 25, 2014, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, transport or

⁴ TSN dated August 20, 2014, p. 3.

⁵ *Rollo*, p. 5.

⁶ *Id.*

⁷ Records, p. 16.

⁸ *Id.* at 13.

⁹ *Rollo*, pp. 5-6.

¹⁰ Records, pp. 2-3.

distribute any dangerous drug did then and there willfully, unlawfully and knowingly sell or offer for sale one (1) heat-sealed transparent plastic sachet marked as "SM" containing ZERO POINT ZERO THREE ONE (0.031) gram of white crystalline substance containing Methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug.

Contrary to law.¹¹

Barcenas entered the plea of not guilty. Trial on the merits ensued.

In a Decision¹² dated September 21, 2016, the RTC found Barcenas guilty of the crime charge against her. Barcenas was sentenced to suffer life imprisonment and to pay a fine of P500,000.00. According to the RTC, a valid buy-bust operation was conducted and the prosecution successfully established the links in the chain of custody: (1) the marking and inventory was done immediately upon arrest and near the place of arrest; (2) arresting officer PO1 Delos Santos turned over the seized items to investigating officer PO2 Yap; (3) PO2 Yap turned over the same to the crime laboratory; (4) PCI Reyes-Arturo conducted the qualitative examination; and (5) the specimen was presented in court by PCI Reyes-Arturo.¹³ On the other hand, the defense failed to substantiate its denial and alibi. It also failed to show any ill motive on the part of the police officers to impute the offense to Barcenas.

On appeal, the defense questioned the conduct of the alleged buy-bust operation on the following grounds: (1) the buy-bust money was not subjected to ultra-violet powder dusting;¹⁴ (2) PO1 Delos Santos cannot tell when he placed the marking "J" on the buy-bust money, whether prior to the operation or after;¹⁵ and (3) that the test-buy and surveillance were not conducted to verify the veracity of the confidential informant's tip.¹⁶ Moreover, it is argued that the rule on the chain of custody was not strictly followed. Barcenas claimed that the stipulation on PIC Reyes-Arturo's testimony pertained only to the findings of the laboratory examination, but not on the proper handling of the specimen.¹⁷ In addition, there was no representative from the Department of Justice (DOJ) nor the media during inventory. Neither was there a counsel or representative of the accused.¹⁸

On August 8, 2017, the CA affirmed the conviction of Barcenas. The appellate court upheld the validity of the buy-bust operation. The argument of Barcenas that the lack of prior surveillance renders the operation irregular

¹¹ Id. at 2.
¹² Supra note 2.
¹³ CA *rollo*, p. 49.
¹⁴ Id. at 31.
¹⁵ Id. at 32.
¹⁶ Id. at 33.
¹⁷ Id. at 35.
¹⁸ Id. at 40.

was found to be untenable. The CA found that “the clear and categorical statements of the police officer who acted as poseur-buyer deserves more probative merit than the mere denial of x x x Barcenas.”¹⁹ Furthermore, the CA ruled that the unbroken chain of custody was established by the prosecution. The CA found no error on the part of the police officers when they conducted the marking and inventory at the house of Kagawad Palanca, which is near the place of arrest. This conduct is justified “because there were many people around the place of apprehension, which circumstance could very well affect the proper inventory of the seized item[s].”²⁰ As regards the links in the chain of custody, the CA held that “the record of transfers is clear, starting from arresting officer PO1 Delos Santos to investigator PO2 Yap x x x. Consequently, from PO2 Yap and PO1 Delos Santos, the items were brought to the crime laboratory for examination by Forensic Chemical Officer PCI Elisa G. Reyes-Arturo.”²¹ The parties likewise stipulated that “the specimen brought over by the Forensic Chemist are the same [specimen] attached to the request for laboratory examination x x x.”²²

The Office of the Solicitor General filed a Manifestation²³ dated September 14, 2018 that it would adopt the Appellee’s Brief²⁴ dated February 20, 2017 as its Supplemental Brief. Likewise, the defense, through the Public Attorney’s Office, filed its Manifestation²⁵ dated October 16, 2018 adopting as supplemental brief the Appellant’s Brief²⁶ dated January 25, 2017 filed before the CA.

Ruling of the Court

We find the appeal impressed with merit.

First, R.A. 9165 provides reasonable safeguards to preserve the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders.²⁷ Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. Proper procedures to account for each specimen by tracking its handling and storage from point of seizure to presentation of the evidence in court and its final disposal must be observed. Strict compliance with the chain of custody rule is essential in order for the prosecution to establish the guilt of the accused beyond reasonable doubt. Immediately after seizure and confiscation, the apprehending team is required to conduct a physical inventory and to

¹⁹ *Rollo*, p. 9.

²⁰ *Id.* at 10-11.

²¹ *Id.* at 12.

²² *Id.*

²³ *Id.* at 22-25.

²⁴ *CA rollo*, pp. 51-67.

²⁵ *Rollo*, pp. 27-31.

²⁶ *CA rollo*, pp. 24-43.

²⁷ *Cariño v. People*, 600 Phil. 433, 448 (2009).

photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of R.A. 9165 by R.A. 10640 approved on July 23, 2014, a representative from the media *and* the DOJ, and any elected public official; or (b) if *after* the amendment of R.A. 9165 by R.A. 10640, an elected public official and a representative of the National Prosecution Service *or* the media.²⁸

Barcenas was arrested prior to the effectivity of R.A. 10640. The witnesses required in this case are: (a) a representative from the media; (b) a DOJ representative; and (c) any elected public official. It is gathered from the Joint Affidavit of Apprehension²⁹ submitted before the Office of the City Prosecutor of Manila, as well as the Inventory Sheet (Exhibit K)³⁰ that only Kagawad Palanca, an elected official, was present during the marking and inventory conducted in his house which is near the place of arrest.

Section 21(a), Article II of the IRR of R.A. 9165 adopted in Section 1 of R.A. 10640 admits exceptions to non-compliance with the rules of chain of custody under justifiable grounds. Non-compliance with the three or two-witness rule may be permitted only if the prosecution proves that the apprehending officers exerted genuine, sufficient, and earnest efforts but failed to secure the presence of said witnesses. Mere statements of unavailability, absent actual serious attempts to secure the required witnesses, are unacceptable.³¹

Here, the records are bereft of any justification why Kagawad Palanca was the only witness present during the inventory. No explanation was given as to the absence of representatives from the DOJ and the media. Neither was there any statement to prove that genuine and earnest efforts were exerted to secure their presence. This non-compliance is rendered even more unreasonable given the fact that the buy-bust operation was planned. The police officers received the confidential information about Barcenas' illegal activities at around 9:00 a.m., while the arrest of Barcenas was effected at about 4:00 p.m. The buy-bust team had more or less seven hours of preparation – from the time they received the information until the arrest of Barcenas – to procure the presence of the required witnesses.

Second, this Court also finds questionable the marking of the seized items with “SM,” which, as admitted by PO1 Delos Santos, does not signify anything.³² He further explained that “it just entered [his] mind” to mark the seized items as such.³³ This explanation is simply unacceptable to justify the deviation from the standard operating procedure wherein the seizing officer

²⁸ See *Dimaala v. People*, G.R. No. 242315, July 3, 2019.

²⁹ Records, pp. 8-9.

³⁰ Id. at 17.

³¹ *People v. Agustin*, G.R. No. 233336, January 14, 2019.

³² TSN dated August 20, 2014, p. 15.

³³ TSN dated August 20, 2014, p. 15.

must mark the evidence with his initials.³⁴ Furthermore, the manner of marking of the seized items involving drugs defeats the very purpose for which the marking is intended – that is to differentiate the seized items from those recovered from the other offenders. Again and again, this Court emphasizes that in cases involving illegal drugs, strict compliance with the rules on chain of custody, which includes the proper marking of the seized items, is required because these items are highly susceptible to planting, alteration, tampering, contamination, and even substitution and exchange.³⁵

Third, the prosecution left numerous unanswered questions as regards the circumstances surrounding the handling of seized items by the investigating officer and the forensic chemist. The testimony of PO2 Yap, the investigating officer, was dispensed with based on the following stipulations:

- (1) that he is the investigator in cases assigned at Police Station Number 4;
- (2) he prepared the letter referral for inquest dated January 26, 2014, the Joint Affidavit of Apprehension, the Booking Sheet and Arrest Report of Barcenas and Abid;
- (3) he also prepared the Chain of Custody Form which reflects the fact that he received from PO1 Delos Santos the pieces of evidence seized from Barcenas;
- (4) that he turned over the seized items to PCI Reyes-Arturo;³⁶ and
- (5) that the marked money is not in his possession and can no longer be found.³⁷

Nothing in the records relates to the testimony of PCI Reyes-Arturo, and neither was there any stipulation on her testimony. As a rule, the police chemist who examines a seized substance should ordinarily testify that: (1) he/she received the seized article as marked, properly sealed and intact; (2) he/she resealed it after examination of the content; and (3) he/she placed his/her own marking on the same to ensure that it could not be tampered pending trial.³⁸ In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he/she took the precautionary steps mentioned.³⁹ In the absence of the forensic chemist's testimony and stipulation thereof, as in this case,

³⁴ Philippine National Police Manual PNPM-D-0-2-14(DO).
2.35. The Seizing Officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found/recovered or seized.

³⁵ *People v. Antonio*, G.R. No. 243936, September 16, 2019.

³⁶ TSN dated February 18, 2015, pp. 2-4.

³⁷ TSN dated October 23, 2015, pp. 3-4.

³⁸ *People v. Ambrosio*, G.R. No. 234051, November 27, 2019, citing *People v. Pajarin*, 654 Phil. 461 (2011).

³⁹ *People v. Pajarin*, 654 Phil. 461, 467 (2011).

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there is no way to prove that the identity and the integrity of the *corpus delicti* have been preserved.

Fourth, Chemistry Report No. D-045-14⁴⁰ was admitted in court as Exhibit C⁴¹ despite lack of proper authentication and in the absence of the forensic chemist's testimony or a proper stipulation thereof. Thus, the veracity of Chemistry Report No. D-045-14 was not proven. Consequently, there is no evidence to prove that the *shabu* confiscated from Barcenas is the same *shabu* presented in court. In short, there is no proof of the *corpus delicti*, the Methamphetamine Hydrochloride or *shabu* in the plastic sachet recovered from Barcenas.

All in all, the prosecution substantially failed in proving not only the links in the chain of custody, but also the identity and integrity of the seized items. There is no moral certainty to pronounce the guilt of Barcenas for the crime charged.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 8, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08685 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Solimar Barcenas y Garcia a.k.a "Nay" is **ACQUITTED** of the charge of violating Section 5, Article II of Republic Act No. 9165. The Superintendent of the Correctional Institution for Women is **ORDERED** to cause her **IMMEDIATE RELEASE**, unless further detention is lawful for other reasons.

Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institution for Women, Mandaluyong City for immediate implementation, who is then also directed to report to this Court the action she has taken within five (5) days from receipt of this Resolution.

SO ORDERED."

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

GER
10/08/20

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⁴⁰ Records, p. 13.

⁴¹ Id. at 104.

The Presiding Judge
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(Crim. Case No. 14-303075)

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