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Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
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Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 7, 2020**, which reads as follows:*

“G.R. No. 243637 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. HERBERT PASTIRA y MERGO @ BERT, *accused-appellant*.) — In crimes involving dangerous drugs, justification for noncompliance with the chain of custody rule must be alleged and proved. Failure to do so casts serious doubts on the integrity and evidentiary value of the *corpus delicti*, warranting an accused’s acquittal on reasonable doubt.

This Court resolves the appeal¹ challenging the Court of Appeals Decision,² which affirmed the Regional Trial Court Decision³ convicting Herbert Pastira y Megro (Pastira) of the illegal sale and illegal possession of dangerous drugs.

Pastira was charged with violation of Sections 5 and 11 of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The two (2) separate Informations read:

R-MKT-16-00906-CR

On the 24th day of June 2016, in the city of Makati, the Philippines, accused [sic], not being authorized by law and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control zero point one three (0.13) gram of methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the above-cited law.⁴

R-MKT-16-00907-CR

¹ *Rollo*, pp. 22–23.

² *Id.* at 2–20. The November 29, 2017 Decision in CA-G.R. No. 09121 was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Magdangal M. De Leon and Zenaida T. Galapate-Laguilles of the Fifth Division, Court of Appeals, Manila.

³ *CA rollo*, pp. 60–65. The September 27, 2016 Decision in Criminal Case No. R-MKT-16-00906-CR and Criminal Case No. R-MKT-16-00907-CR was penned by Presiding Judge Gina M. Bibat-Palamos of Branch 64, Regional Trial Court, Makati City.

⁴ *Id.* at 60.

certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.] (Emphasis supplied)

Fidelity to these procedural requirements reduces the risk of tampering, loss, or mistake due to the fungible character of prohibited drugs and the covertness of drug operations.⁴³ It also guarantees the observance of the four (4) links established in *People v. Nandi*:⁴⁴

The following links should be established in the chain of custody of the confiscated item: first, 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.⁴⁵ (Citation omitted)

Failure, on the part of the prosecution, to establish these links “casts serious doubts on the identity of the seized item and its actual connection with the transaction involved and with the parties thereto.”⁴⁶ When without any justifiable reason, this noncompliance with the law’s requirements and the chain of custody rule amounts to failing to preserve the *corpus delicti*’s integrity and evidentiary value. “Without the *corpus delicti*, there is no offense of illegal sale [and possession] of dangerous drug committed.”⁴⁷

Moreover, considering that it is not immediately apparent to the naked eye whether the evidence presented are indeed dangerous drugs, especially when an accused is prosecuted on minuscule amounts, courts must take a more stringent approach when evaluating proof.⁴⁸ The policy considerations were elaborated in *Mallillin v. People*:⁴⁹

[T]he likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. . . .

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the

⁴³ *People v. Royol*, G.R. No. 224297, February 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005>> [Per J. Leonen, Third Division].

⁴⁴ 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

⁴⁵ Id. at 144–145.

⁴⁶ *People v. Banding*, G.R. No. 233470, August 14, 2019 <<http://sc.judiciary.gov.ph/7205/>> [Per J. Leonen, Third Division] citing *People v. Nandi*, 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

⁴⁷ Id.

⁴⁸ *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

⁴⁹ 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied*, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.⁵⁰ (Citations omitted, emphasis supplied)

Here, accused-appellant was charged with possessing 0.13 gram and for selling 0.06 gram of shabu. As *Mallillin* directed, this Court employs heightened scrutiny in cases involving dangerous drugs.

This Court notes that it was neither clear which two (2) of the three (3) sachets allegedly confiscated from accused-appellant were the basis in charging accused-appellant, nor was it clear which were presented in evidence. We scoured the records to no avail. This signifies how the basic rules on evidence were completely disregarded here.

II

*Lescano v. People*⁵¹ summarized the statutory requirements in the seizure, marking, and inventory of the illegal drugs:

Section 21 (1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21 (1) is specific as to when and where these actions must be done. As to when, it must be “*immediately after seizure and confiscation.*” As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.”

Moreover, *Section 21 (1) requires at least three (3) persons to be present during the physical inventory and photographing.* These persons are: *first*, the accused or the person/s from whom the items were seized; *second*, an elected public official; and *third*, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be

⁵⁰ Id. at 588.

⁵¹ 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

present in his or her place.⁵² (Emphasis supplied)

The text of Section 21 of the Comprehensive Dangerous Drugs Act commands that the law enforcers inventory and take photographs of the confiscated article. These must be conducted in the presence of the accused or counsel, along with the third-party witnesses: (1) any elected public official; (2) a representative the Department of Justice; or (3) the media.

*People v. Adobar*⁵³ stressed that these witnesses must be present not only during the conduct of inventory and taking of photographs of the items, but also during “the time of and at or near the place of apprehension and seizure[.]” especially in buy-busts:

By the same intent of the law behind the mandate that the initial custody requirements be done “immediately after seizure and confiscation,” the aforesaid witnesses must already be physically present at the time of apprehension and seizure — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its very nature, a planned activity. Simply put, the buy-bust team had enough time and opportunity to bring with them these witnesses.

In other words, while the physical inventory and photographing is allowed to be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure,” this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs “immediately after seizure and confiscation.”⁵⁴ (Citation omitted)

Mandating the presence of disinterested witnesses reduces the likelihood of tampering, planting or switching of evidence, and ensures that the chain of custody rule is strictly followed. *People v. Mendoza*⁵⁵ discussed the effects of their “insulating presence[:]”

Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the

⁵² Id. at 475.

⁵³ G.R. No. 222559, June 06, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64272> [Per J. Caguioa, Second Division].

⁵⁴ Id.

⁵⁵ 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

incrimination of the accused. *Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.*⁵⁶
(Emphasis supplied)

Here, the prosecution established that only a barangay kagawad was present during the conduct of inventory and taking of photographs at the barangay hall.⁵⁷ Not one witness, as required by law, was in attendance. The police officers claimed that they conducted the inventory after waiting for more than an hour at the place of arrest for an elected official, media personnel, and a representative from the Department of Justice, but to no avail.⁵⁸ However, there was no mention whether or not their presence was sought to witness the warrantless arrest.

Indeed, Section 21, as amended, sanctions noncompliance with respect to the presence of third-party witnesses “under justifiable grounds” and “as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team[.]”⁵⁹

However, *People v. Lim*⁶⁰ discussed that the prosecution must show that the apprehending officers exerted *earnest efforts* to comply with the law. It cannot solely rely on sweeping guarantees, and it must allege and prove that the law enforcers took positive measures to substantially comply. Jurisprudence cited some excusable grounds:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.⁶¹ (Citation omitted)

Here, the prosecution did not proffer any explanation, let alone any justification, on the complete absence of the required witnesses during the apprehension of the accused-appellant and during the marking, taking of

⁵⁶ Id. at 764.

⁵⁷ CA rollo, p. 62

⁵⁸ Id.

⁵⁹ Rep. Act. No. 10640 (2014), sec. 21.

⁶⁰ G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>> [Per J. Peralta, En Banc].

⁶¹ Id.

that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.

The criminal accusation against a person must be substantiated by proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty.⁷⁰ (Citation omitted, emphasis supplied)

We remind our police that misplaced vigilance and overzealousness in arrests, especially when laden with unlawful practices, do not strengthen the rule of law. Rather, they burden the justice system with mistrust. Higher standards must be demanded from our law enforcement.

As we face the same problems, this Court reiterates our earlier pronouncement in *Holgado*:

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.⁷¹

⁷⁰ Id. at 90–91.

⁷¹ *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

All told, the prosecution failed to prove the *corpus delicti* beyond reasonable doubt, and this warranted accused-appellant's acquittal.

WHEREFORE, the Court of Appeals' November 29, 2017 Decision in CA-G.R. CR-HC No. 09121 is **REVERSED** and **SET ASIDE**. Accused-appellant Herbert Pastira y Mergo is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General of the Bureau of Corrections is directed to report to this Court the action he has taken within five (5) days from receipt of this Resolution. Copies shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

The Regional Trial Court is directed to turn over the seized sachets of methamphetamine hydrochloride to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgment be issued immediately.

SO ORDERED."

By authority of the Court:

Misa D C Batt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court *for*
3/11/21

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The Presiding Judge
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Branch 64, 1200 Makati City
(Crim. Case Nos. R-MKT-16-00906-CR &
R-MKT-16-00907-CR)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
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