



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 218434
Plaintiff-Appellee,

Members:

- versus -

CARPIO, J., Chairperson
PERLAS-BERNABE,*
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

Promulgated:

PILAR BURDEOS y OROPA,
Accused-Appellant.

17 JUL 2019

X ----- *M. Cabalag Perfecto* ----- X

DECISION

LAZARO-JAVIER, J.:

The Case

This appeal seeks to reverse the Decision¹ dated May 7, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05981 affirming the conviction of appellant Pilar Burdeos y Oropa for violation of Section 5, Art. II of Republic Act 9165 (RA 9165)² and imposing on her the corresponding penalties.

* On Official Leave
¹ *Rollo*, pp. 2-16.
² The Comprehensive Dangerous Drugs Act of 2002.

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The Proceedings Before the Trial Court

The Charge

By Information dated August 21, 2008, appellant was charged with violation of Section 5, Art. II of RA 9165, *viz*:

That on or about the 19th day of August 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, deliver and give away to another, Ephedrine, a dangerous drug, weighing 0.03 gram, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.

Contrary to law.³

The case was raffled to the Regional Trial Court (RTC)-Branch 204, Muntinlupa City.

On arraignment, appellant pleaded not guilty.⁴

At the pre-trial, the prosecution and the defense stipulated on the identity of the accused, the trial court's jurisdiction, and the qualifications of PS/Insp. Abraham Tecson as an expert witness.⁵

During the trial, police officers Eddie Guevarra and Rondivar Hernaez, members of the Anti-Illegal Drugs-Special Operation Task Group of Muntinlupa City, testified for the prosecution. On the other hand, appellant herself, Bejohn Reyes, and Lilibeth Janaban testified for the defense.

Prosecution's Version

On August 19, 2008, Chief Superintendent Alfredo Valdez received a text message about rampant illegal drug activities in Muntinlupa. The members of the Anti-Illegal Drugs-Special Operation Task Force were instructed to conduct surveillance specifically on a certain Pilar Burdeos who turned out to be herein appellant. After confirmation of appellant's illegal drug activity, the task force immediately planned a buy-bust operation on her. Police officer (PO) Eddie Guevarra was designated as poseur buyer, PO Rondivar Hernaez as immediate back up, and POs Bornilla, Gastanez

³ Record, p. 1.

⁴ *Id.* at 22-23.

⁵ *Id.* at 34.



and, Genova as members. The buy-bust team coordinated with the Philippine Drug Enforcement Agency (PDEA), prepared the buy-bust money, and entered the buy bust operation in the blotter.⁶

Around 10 o'clock in the evening, the buy-bust team and the police asset proceeded to appellant's house on board a trolley. There, the asset and PO Guevarra approached appellant who was sitting on a bench in front of a "carindaria." The asset introduced PO Guevarra to appellant as a taxi driver interested to buy shabu. Appellant asked PO Guevarra how much he wanted to buy, to which the latter replied P500.00 worth of shabu. Appellant told PO Guevarra that shabu was expensive and P500.00 could not buy much. PO Guevarra explained he only needed a little amount of shabu anyway. PO Guevarra then handed the buy-bust money to appellant. Thereafter, appellant took a plastic sachet from her pocket and handed it to PO Guevarra who flicked his lighter to signal that the sale had been consummated. The back-up team shortly closed in and placed appellant under arrest.⁷

PO Hernaez informed appellant of her constitutional rights, frisked her, and recovered from her the buy-bust money. The team then brought appellant to the police station where the seized items were marked, inventoried, and photographed in the presence of appellant herself and a civilian named Dennis de Lumban. A request for laboratory examination of the seized plastic sachet was also prepared. PO Guevarra and PO Hernaez brought the request and seized plastic sachet to the crime laboratory.⁸

Per Physical Science Report No. D-336-085, Forensic Chemist PS/Insp. Abraham Tecson found the contents of the plastic sachet positive for ephedrine, a dangerous drug.⁹

The prosecution offered the following in evidence: Pre-Operational Report and Coordination Form submitted to the PDEA, Certificate of Coordination issued by the PDEA, photocopy of the buy-bust money, Certificate of Inventory, photograph of appellant and the seized dangerous drug, Request for Laboratory Examination, Physical Science Report, Booking and Information Sheet, and Sinumpaang Salaysay of POs Guevarra and Hernaez.¹⁰

Defense's Version

On August 19, 2008, around 9 o'clock in the evening, she was at home with her grandchildren and live-in partner when police POs Guevarra, Hernaez, and Martinez suddenly arrived and accused her of being

⁶ TSN dated February 25, 2009, pp. 4-8; TSN dated May 28, 2009, pp. 5-13.

⁷ TSN dated February 25, 2009, pp. 8-15; TSN dated May 28, 2009, pp. 13-20.

⁸ TSN dated February 25, 2009, pp. 16-24; TSN dated May 28, 2009, pp. 20-29.

⁹ Record, p. 127.

¹⁰ *Id.* at 119-134.

a “pusher.” Appellant denied she was selling illegal drugs. The police officers asked if they could search her house. She readily agreed. When the search yielded nothing, the police officers invited her to the police station for investigation. Again, she agreed because she knew she did not do anything wrong. At the police station, she was forced to list down the names of the “pushers” in their area. She refused because she did not know anyone who was engaged in selling shabu. The police officers got angry and uttered “tuluyan na ‘to.”¹¹

Bejohn Reyes and Lilibeth Janaban, appellant’s grandson and daughter, respectively, corroborated appellant’s testimony that her house was searched and the police officers did not recover anything.¹²

The Trial Court’s Ruling

By Judgment dated November 28, 2012, the trial court rendered a verdict of conviction, *viz*:

WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of the crime herein charged, accused PILAR BURDEOS y OROPA is sentenced to LIFE IMPRISONMENT and to pay a FINE of Php500,000.00.

The preventive imprisonment undergone by the accused shall be credited in her favor.

The drug evidence are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Issue a MITTIMUS committing accused PILAR BURDEOS y OROPA to the Correctional Institute for Women for the service of her sentence pending any appeal that she may file in this case.

SO ORDERED.¹³

The trial court ruled that as between the testimony of POs Guevarra and Hernaez, on one hand, and the testimony of appellant, her grandson, and daughter, on the other, the former was more worthy of belief. It upheld the entrapment operation on appellant and rejected the latter’s defense of denial.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court when it allegedly overlooked the following fatal omissions during the supposed buy-bust

¹¹ TSN dated June 23, 2010, pp. 3-21.

¹² Bejohn Reyes’ testimony, TSN dated March 10, 2011, pp. 3-22; Lilibeth Janaban’s testimony, TSN dated June 22, 2011, pp. 3-9.

¹³ CA *rollo*, pp. 76-83; Record, pp. 196-203.

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operation, *viz*: lack of search warrant and failure to immediately mark the seized plastic sachet at the place of arrest. Appellant also faulted the trial court when it gave credence to the purported inconsistent testimonies of POs Guevarra and Hernaez pertaining to who had custody of the seized drug from the police station *en route* to the crime laboratory.¹⁴

For its part, the Office of the Solicitor General (OSG), through Assistant Solicitor General Magtanggol M. Castro and Associate Solicitor Eileen C. Paloma, countered in the main: 1) the presumption of regularity in the performance of their official functions in favor of the buy-bust team prevails over appellant's bare denial; 2) the warrantless search on appellant's person was a valid incident to appellant's arrest in flagrante delicto; 3) there was substantial compliance with the chain of custody rule; and 4) the inconsistent claims pertaining to who had custody of the seized item was irrelevant to the essential elements of the crime charged.¹⁵

The Court of Appeals' Ruling

By Decision dated May 7, 2014, the Court of Appeals affirmed. It found that there was substantial compliance with the chain of custody rule and the integrity of the seized drug was properly preserved. Thus, despite the failure to mark the items immediately upon confiscation, the chain of custody had remained intact. There is no doubt, therefore, that the seized dangerous drug was the same one submitted to the crime laboratory for testing and subsequently presented in court as evidence. It gave credence to the testimonies of the prosecution witnesses who as police officers are presumed to have regularly performed their official functions.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for her acquittal. In compliance with Resolution¹⁶ dated August 3, 2015, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.¹⁷

The Core Issues

1) Was the chain of custody complied with? 2) Assuming in the negative, did the saving clause operate to cure the procedural infirmities, if any, pertaining to the integrity and evidentiary value of the seized drug?

¹⁴ CA *rollo*, pp. 53-73.

¹⁵ *Id.* at 98-114.

¹⁶ *Rollo*, pp. 21-22.

¹⁷ Appellant's Manifestation, *id.* at 24-25; The People's Manifestation, *id.* at 28-30.



Ruling

On the first issue, the Court rules in the negative.

Petitioner was charged with violation of Section 5, Art. II of RA 9165 (illegal sale of dangerous drugs) allegedly committed on August 19, 2008. The applicable law is RA 9165 before its amendment in 2014.

In cases involving violations of RA 9165, the *corpus delicti* refers to the drug itself. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.¹⁸

Section 21 of RA 9165 sets out the step by step procedure to ensure that the *corpus delicti* has been preserved, thus:

Section 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 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;** (Emphasis added)

X X X

X X X

X X X

The Implementing Rules and Regulations of RA 9165 relevantly ordains:

Section 21. (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**

¹⁸ See *People v. Ismael*, 806 Phil. 21, 29 (2017).



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. (Emphases added)

x x x

x x x

x x x

Section 21 and 21 (a) are the summation of the chain of custody rule. It consists of four (4) connecting links:

One. The seizure and marking of the illegal drug recovered from the accused by the apprehending officer;

Two. The turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Three. The turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Four. The turnover and submission of the marked illegal drug seized by the forensic chemist to the court.¹⁹

Here, all four (4) links had never at any point joined into one (1) unbroken chain. Consider:

First. Marking of the seized drug was not immediately done after seizure at the place of arrest. POs Guevarra and Hernaez both testified that following appellant's arrest, the buy-bust team went back to the police station and only there did PO Guevarra mark the seized drug. *En route*, the item remained unmarked. It was clearly exposed to switching, planting, and contamination. Notably, no one from the buy-bust team explained why the prescribed procedure for marking was not followed.

In *People v. Ismael*, the Court noted that there was already a significant break in the chain of custody when the seized dangerous drugs were not marked at the place where the accused was arrested. There were also no explanations why marking was not done immediately. The Court ruled that because of this break in the chain of custody there can be no assurance that switching, planting, or contamination did not actually take place.²⁰

Second. As required, the physical inventory and photograph of the seized drugs immediately after seizure or confiscation shall be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official.

¹⁹ See *People v. Gayoso*, 808 Phil. 19, 31 (2017).

²⁰ See *supra* note 18, at 34.

Here, PO Guevarra testified:

Q: When you made the Inventory there was no representative or counsel, media or any representative from the Department of Justice or any elected public officer, is it not?

A: I do not know, sir.²¹

On the other hand, PO Hernaez stated:

Q: And you made the Certificate of Inventory in your office?

A: Yes, sir.

Q: And witnessed by a certain Dennis Lumban who is a civilian?

A: Yes, sir.²²

Both prosecution witnesses testified that the inventory and photograph of the seized item were done only in the presence of appellant herself and a certain civilian named Dennis Lumban. The witnesses did not mention that a DOJ representative, a media representative, and a local elected official were themselves also present during the inventory and photograph. The prosecution again failed to acknowledge this deficiency, let alone, offer any explanation therefor. The prosecution offered no explanation either why a certain civilian Dennis Lumban served as witness during the inventory and photograph, in lieu of the three (3) required witnesses.

In *People v. Macud*, the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule. In that case, the prosecution likewise failed to satisfactorily explain the absence of the DOJ representative, media representative, and local elective official during the marking, inventory, and photograph of the seized dangerous drug.²³

Third. Who took custody of the seized item from the place of arrest *en route* to the police station? Who turned it over to the police investigator? Who between PO Guevarra and PO Hernaez took hold of the seized drug *en route* the crime laboratory? In their respective testimonies, the police officers pointed to each other as the custodian of the seized drug at every instance. Indubitably, this inconsistency marks another breach of the chain of custody rule.

Every person who takes possession of seized drugs must show how it was handled and preserved while it remains in his or her custody to prevent any switching or replacement. The Court acquitted the accused in *People v. Ismael* due to, among others, the contradictory claims of the investigating

²¹ TSN dated March 26, 2009, p. 23.

²² TSN dated February 18, 2010, p. 8.

²³ G.R. No. 219175, December 14, 2017, 849 SCRA 294, 323.

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officer pertaining to who gave him the seized drugs. Due to these apparent inconsistent claims, it was highly possible that there was switching or tampering of the seized drugs.²⁴

Fourth. Who received the seized item when it was delivered to the crime laboratory? The prosecution was conspicuously silent on this.

People v. Enriquez considered there was a break in the chain of custody of the seized drugs when the prosecution failed to offer in evidence the testimonies of all persons who handled the specimen. In that case, the arresting officers failed to identify the person to whom they turned over the seized items. There is, therefore, a crucial missing link, *i.e.* what happened to the seized items after they left the hands of the arresting officers?²⁵

Fifth. The last remaining link refers to how the seized item was stored in the crime laboratory pending its delivery to the court for presentation as evidence. Who actually delivered it to the court for the purpose of presenting it as evidence? To this moment, this question has not been answered.

In *People v. Hementiza*, the accused was acquitted for illegal sale of dangerous drugs because the records are bereft of any evidence as to how the illegal drugs were brought to court. The forensic chemist therein merely testified that she made a report confirming that the substance contained in the sachets brought to her was positive for *shabu*. There was no evidence how the *shabu* was stored, preserved or labeled nor who had custody thereof before it was presented before the trial court.²⁶

Indeed, the repeated breach of the chain of custody rule here was a fatal flaw which had destroyed the integrity and evidentiary value of the *corpus delicti*.

We have clarified that a perfect chain may be impossible to obtain at all times because of varying field conditions.²⁷ In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.²⁸ Section 21 (a) of the Implementing Rules and Regulations of RA 9165 contains the following proviso:

Section 21. (a) xxx 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.

²⁴ Supra note 18, at 35.

²⁵ See 718 Phil. 352, 368 (2013).

²⁶ See 807 Phil. 1017, 1038 (2017).

²⁷ See *People v. Abetong*, 735 Phil. 476, 485 (2014).

²⁸ See Section 21 (a), Article II, of the IRR of RA 9165.

On this score, *People v. Jugo* specified the twin conditions for the saving clause to apply:

[F]or the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.²⁹

Here, both POs Guevarra and Hernaez offered no explanation which would have excused the buy-bust team's stark failure to comply with the chain of custody rule. In other words, the condition for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved," too, will not come into play.

Consequently, in light of the prosecution's failure to provide justifiable grounds for non-compliance with the chain of custody rule, appellant's acquittal is in order. On this score, *People v. Crispo* is apropos:

Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.³⁰

Suffice it to state that the presumption of regularity in the performance of official functions³¹ cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.³² Here, the presumption was amply overturned by compelling evidence on record of the repeated breach of the chain of custody rule.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated May 7, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05981 is **REVERSED** and **SET ASIDE**.

²⁹ G.R. No. 231792, January 29, 2018.

³⁰ G.R. No. 230065, March 14, 2018.

³¹ Section 3 (m), Rule 131, Rules of Court

³² *People v. Cabiles*, 810 Phil. 969, 976 (2017).

Appellant Pilar Burdeos y Oropa is **ACQUITTED**. The Superintendent of the Correctional Institution for Women, Mandaluyong City is ordered to (a) immediately release appellant from custody unless she is being held for some other lawful cause; and (b) submit his or her report on the action taken within five days from notice.

Let an entry of final judgment be issued immediately.

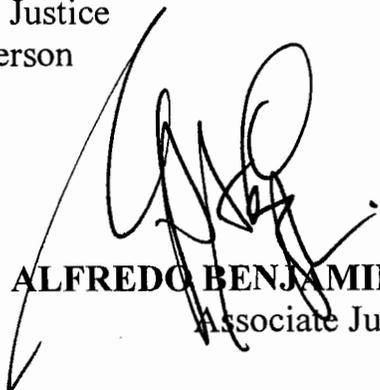
SO ORDERED.

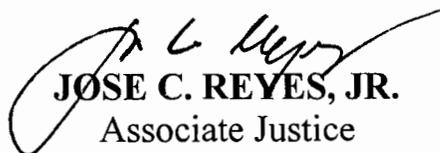

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

(On Official Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


JOSE C. REYES, JR.
Associate Justice

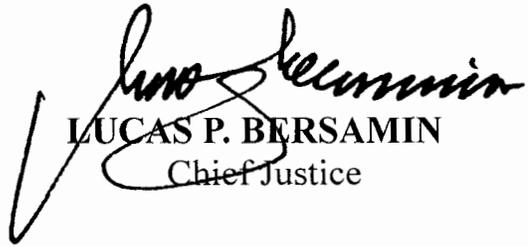
ATTESTATION

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, Second Division

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

