

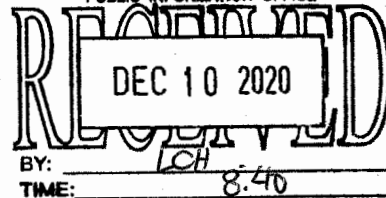


Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated August 24, 2020, which reads as follows:

“G.R. No. 248368 (*People of the Philippines v. Josephine Limbaga y Caban a.k.a. “Nanay”*). – This is an appeal seeking to reverse and set aside the Decision¹ dated April 24, 2019 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 02540, which affirmed the Decision² dated May 10, 2017 of the Regional Trial Court (RTC) of Toledo City, Branch 29, finding accused-appellant Josephine Limbaga y Caban a.k.a. “Nanay” (Limbaga) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Drugs Act of 2002.”

Limbaga was charged on July 14, 2011 with violation of Sections 5 and 11, Article II of R.A. 9165 in separate informations, the accusatory portion of each reads as follows:

In Crim. Case No. TCS-7273

That on or about 28 June 2011, at around 1:20 o'clock dawn, more or less, in Lawis, Luray II, Toledo City, Philippines, and within the jurisdiction of this Honorable Court, said accused, without being authorized by law, with deliberate intent, did then and there willfully, unlawfully and feloniously sell to a poseur-buyer, a dangerous drug, consisting of one (1) piece heat-sealed plastic pack containing METHYLAMPHETAMINE HYDROCHLORIDE, also known as “shabu”, with the weight of 0.05 gram and recovered from the possession and control of accused JOSEPHINE LIMBAGA Y CABAN A.K.A. “NANAY” was the one (1) Five Hundred Peso Bill with Serial No. MC110773 used as buy-bust money.

CONTRARY TO LAW.

¹ Penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Edward B. Contreras and Dorothy Montejo-Gonzaga; *rollo*, pp. 5-15.

² Penned by Judge Ruben F. Altubar; *CA rollo*, pp. 34-42.

In Crim. Case No. TCS-7274

That on or about 28 June 2011, at around 1:20 o'clock dawn, more or less, in Lawis, Luray II, Toledo City, Philippines, and within the jurisdiction of this Honorable Court, said accused, without being authorized by law, did then and there willfully, unlawfully and feloniously possess and maintain in his possession and control one (1) sachet small heat-sealed transparent plastic packet containing METHYLAMPHETAMINE HYDROCHLORIDE, also known as Shabu, with the weight of 0.05 gram, a dangerous drug.

CONTRARY TO LAW.³

When arraigned, Limbaga pleaded not guilty to the crimes charged against her. During pre-trial conference, the following were stipulated: (1) Limbaga's name and identity; and (2) that she was arrested by members of the Philippine National Police (PNP) on June 28, 2011 at 11:20 a.m. qualifying though that her arrest was illegal. Trial on the merits then ensued.⁴

The prosecution presented the following as its witnesses: (1) Police Officer (PO) 3 Erwin Carbonquillo (PO3 Carbonquillo); (2) PO3 Ronald B. Cano (PO3 Cano); (3) former police officer Roel Suquib (PO2 Suquib);⁵ and (4) Forensic Chemical Officer P/Supt. Mutchit G. Salinas (FCO Salinas) of the PNP Crime Laboratory Office 7, Cebu City. On the other hand, Limbaga testified on her own behalf.⁶

The prosecution's evidence established that on June 28, 2011 at 1:10 in the morning⁷ after a 24-hour surveillance,⁸ Police Chief Inspector Jovito Canlapan (PCI Canlapan) instructed PO3 Carbonquillo, PO3 Cano, and PO2 Suquib to conduct a buy-bust operation against a certain "Nanay" of Lawis, Luray II, Toledo City.⁹ The serial number MC110773¹⁰ of the ₱500.00 bill buy-bust money was recorded in the police blotter. PO3 Carbonquillo, PO3 Cano, and PO2 Suquib then proceeded to the operation area.¹¹

When the buy-bust team arrived at 1:20 a.m., they saw Limbaga standing in front of her house – a well-lighted area with a lamp post – acting as if she was waiting for someone.¹² PO3 Carbonquillo and PO2 Suquib went to a nearby store, pretended to be customers, and positioned themselves five

³ Id. at 34-35.

⁴ Id. at 35.

⁵ They were all assigned to the Toledo City Police Station at the time of the incident.

⁶ CA *rollo*, pp. 35, 38.

⁷ Records, p. 12.

⁸ TSN dated June 3, 2015, p. 8.

⁹ Records, p.13; TSN dated July 24 2013, p. 6.

¹⁰ TSN dated February 5, 2014, p. 7.

¹¹ TSN dated July 24, 2013, p. 7.

¹² Id. at 6.

meters away so they would not be seen by Limbaga.¹³ *Poseur*-buyer PO3 Cano approached Limbaga, handed her a ₱500.00 bill, and told her that he wanted to buy ₱500.00 worth of *shabu*.¹⁴ Limbaga handed back to PO3 Cano a transparent plastic sachet.¹⁵ PO3 Cano removed and raised his cap and upon seeing the pre-arranged signal, PO3 Carbonquillo and PO2 Suquib rushed to grab Limbaga's hands.¹⁶

PO3 Cano recovered from Limbaga's hand the ₱500.00 bill he gave her.¹⁷ PO3 Cano frisked Limbaga and found a transparent plastic sachet in her right pocket.¹⁸ PO3 Carbonquillo, PO3 Cano, and PO2 Suquib brought Limbaga to the Toledo City Police Station.¹⁹

The inventory of the items seized, their marking, and their photographs were taken at the police station.²⁰ Aside from the arresting officers, the Certificate of Inventory²¹ was signed also by PCI Canlapan, Department of Justice (DOJ) Representative Neilo Camangyan, and Elective Public Official Rolando P. Tausa. The plastic sachets confiscated during the buy-bust operation and the search made after arrest were marked respectively by PO3 Cano as "JL-1" and "JL-2."²² Photographs were taken using PO3 Carbonquillo's cellular phone but they were not printed nor developed because the latter got lost.²³

PO3 Carbonquillo, PO3 Cano, and PO2 Suquib proceeded to PNP Crime Laboratory Office 7 bringing with them the plastic sachets and the Laboratory Examination Request signed by PCI Canlapan.²⁴ After conducting the requested laboratory examination, FCO Salinas found that both specimens yielded positive for the presence of Methamphetamine Hydrochloride, a dangerous drug.²⁵

Limbaga testified that on June 28, 2011 at 8:30 p.m., she went outside her house after dinner. Three men approached her, held her hand, and handcuffed her. She was placed inside a *trisikad* and brought to the police station. She did not know the reason why she was brought to the police station and put in jail.²⁶

¹³ Id. at 15.
¹⁴ Id. at 6-7.
¹⁵ Id. at 8.
¹⁶ Id.
¹⁷ Id. at 8.
¹⁸ Id. at 9.
¹⁹ TSN dated February 5, 2014, p. 7.
²⁰ Id. at 10.
²¹ Records, p. 161.
²² TSN dated February 5, 2014, p. 10.
²³ Id. at 20.
²⁴ Records, p. 15.
²⁵ Id. at 171.
²⁶ TSN dated March 15, 2017, pp. 3-4.

On May 10, 2017, the RTC rendered a Decision²⁷ finding Limbaga guilty of the crimes charged against her. For Illegal Sale of Dangerous Drugs, she was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. For Illegal Possession of Dangerous Drugs, she was sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and to pay a fine of ₱300,000.00.²⁸

The RTC ruled that the prosecution was able to establish all the elements of the crimes charged. PO3 Carbonquillo, PO3 Cano, and PO2 Squib positively identified Limbaga as the one who sold to PO3 Cano, the *poseur*-buyer, ₱500.00 worth of *shabu*. The 0.05-gram sachet of *shabu* and the ₱500.00 bill bearing serial number MC110773 were consistent with the declarations in the joint affidavit of the arresting officers, police blotter, and other documentary evidence. PO3 Cano's cap removal signalled the completed transaction.²⁹ Limbaga failed to reasonably explain why the plastic sachet of *shabu* which tested positive for the presence of methamphetamine hydrochloride was found in her possession. Limbaga, likewise, failed to offer evidence or proof that her right against unreasonable searches and seizures was violated.³⁰ The RTC declared that the integrity and evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule and disregarded Limbaga's defense of denial.³¹

Aggrieved, Limbaga appealed her conviction to the CA. In her Brief,³² Limbaga alleged that there was serious doubt on the conduct of an actual buy-bust operation. PO2 Cano did not know or have not seen the target of the operation. PO2 Cano's testimony did not disclose from where Limbaga got the plastic sachet of *shabu* she handed to him. Limbaga averred that this information is material since no one else saw their transaction. Limbaga raised the possibility that this plastic sachet came from another source or was merely planted. Limbaga asserted that she is in police custody because she was illegally arrested. Since no valid arrest took place, the search conducted on her after her arrest was likewise illegal.³³

Limbaga noted PO2 Cano's failure to immediately mark the seized items despite there being no threat to their lives.³⁴ PO2 Cano had no way of knowing which plastic sachet was subject of the buy-bust operation and which one was recovered from her when PO2 Cano marked them at the police station. Limbaga pointed to factors which raise doubt on the integrity

²⁷ Records, pp. 208-216.

²⁸ Id. at 216.

²⁹ Id. at 213.

³⁰ Id. at 214.

³¹ Id. at 213-214.

³² CA *rollo*, pp. 14-34.

³³ Id. at 27-28.

³⁴ TSN dated February 5, 2014, p. 10

and evidentiary value of the items listed in the inventory – the belated presentation of the police blotter and certificate of inventory, and the non-submission of the photographs taken during the time of inventory.³⁵ Thus, the prosecution failed to comply with Section 21 of R.A. 9165.

The Office of the Solicitor General (OSG), appearing for the prosecution, claimed that the marking of the dangerous drugs taken from Limbaga at the police station after her arrest falls within the “immediate confiscation” requirement of Section 21 of R.A. 9165.³⁶ The OSG averred that the failure to submit in evidence the photograph of the seized items is not fatal and will not render an accused’s arrest illegal or the items seized/confiscated from her inadmissible.³⁷ The OSG emphasized that: (1) the prosecution was able to present the drug itself in court; and (2) the arresting officers are presumed to have regularly performed their duties there being no evidence showing bad faith, ill will or proof of tampered evidence.³⁸

In its Decision³⁹ dated April 24, 2019, the CA affirmed the Decision of the RTC. The CA quoted with approval the discussion of the RTC finding Limbaga guilty beyond reasonable doubt of the offenses charged.⁴⁰ The CA found the inconsistencies pointed out by Limbaga to be merely trivial, minor, and immaterial.⁴¹ An inconsistency, which has nothing to do with the elements of the crime, is not a ground to reverse conviction.⁴² The CA sustained the RTC in giving credence to the prosecution witnesses’ testimonies because the RTC was in a better position to evaluate the witnesses’ deportment during trial.⁴³ The CA declared that the belated presentation of the police blotter and certificate of inventory was merely peripheral matters that did not affect the integrity of the prosecution’s evidence, hence, insufficient to reverse the assailed decision.⁴⁴ The CA agreed with the OSG that non-submission of the photographs of the seized items was not fatal and will not render Limbaga’s arrest illegal or the items seized/confiscated from her inadmissible.⁴⁵ What was essential is that the prohibited drug confiscated or recovered was the same one offered in court.⁴⁶

Limbaga filed a Notice of Appeal⁴⁷ before the CA. Both the OSG and Limbaga manifested that they will no longer file any supplemental brief.⁴⁸

³⁵ Records, p. 31.
³⁶ Id. at 64.
³⁷ Id. at 64-65.
³⁸ Id. at 65.
³⁹ Supra note 1.
⁴⁰ *Rollo*, p. 11.
⁴¹ Id. at 13.
⁴² Id. at 14.
⁴³ Id.
⁴⁴ Id.
⁴⁵ Id.
⁴⁶ Id.
⁴⁷ CA *rollo*, pp. 88-89.
⁴⁸ *Rollo*, pp. 26-28, 32-34.

The sole issue to be determined is whether the prosecution established Limbaga's guilt beyond reasonable doubt for Illegal Sale and Illegal Possession of Dangerous Drugs under R.A. 9165.

The appeal is meritorious.

To successfully prosecute Illegal Sale of Dangerous Drugs, the following must be established: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.⁴⁹ For Illegal Possession of Dangerous Drugs, the prosecution must establish that the accused freely and consciously possessed the dangerous drugs without authority of law.⁵⁰

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."⁵¹

An accused shall only be convicted of the crime charged once it has been established with "certainty that the drugs examined and presented in court were the very ones seized."⁵² To satisfy this requirement, the procedure under Section 21⁵³ of R.A. 9165⁵⁴ must be complied with. This provision was later amended by R.A. 10640 which took effect in 2014. Since the offenses charged were allegedly committed on June 28, 2011,⁵⁵ the apprehending team is required to conduct immediately a physical inventory and to photograph the seized items in the presence of the accused or from whom the items were seized, or his representative or counsel, as well as

⁴⁹ *People v. Pantallano*, G.R. No. 233800, March 6, 2019.

⁵⁰ *People v. Ismael*, 806 Phil. 21 (2017).

⁵¹ *Id.* citing *Fajardo v. People*, 691 Phil. 752 (2012) and *People v. Gutierrez*, 614 Phil. 285 (2009).

⁵² *People v. Ramos*, G.R. No. 225325, August 28, 2019, citing *People v. Nandi*, 639 Phil. 134 (2010).

⁵³ 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;

x x x x

⁵⁴ This provision was later amended by R.A. No 10640 which took effect in 2014. Since the offenses charged were allegedly committed on June 28, 2011, it is the earlier version and its corresponding Implementing Rules and Regulations which should apply.

⁵⁵ Records, p. 12.

required witnesses, namely: a representative from the media and the DOJ, and any elected public official.

The prosecution failed to show that the buy-bust team strictly complied with the procedure and neither was it able to justify the buy-bust team's non-compliance.

The marking, inventory, and photograph-taking of the seized items were not done immediately despite the transaction happening in an area well-lighted by a post⁵⁶ and the absence of threat to the apprehending officers' lives.⁵⁷ Neither were the photographs presented during trial because allegedly, the cellular phone that was used to take them got lost.⁵⁸

The buy-bust team failed to explain why a member of the media was not present during the marking and inventory of the seized items nor did it show that earnest efforts were in fact exerted to secure or obtain his presence or attendance thereat given that the buy-bust operation was carried out after a 24-hour surveillance.⁵⁹ In the case of *People v. Malana*,⁶⁰ this Court noted that a buy-bust team can easily gather the three required witnesses, considering that its operation is, by its nature, a planned activity.⁶¹

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.⁶²

These 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.⁶³

⁵⁶ TSN dated February 5, 2014, p. 6.

⁵⁷ TSN dated June 3, 2015, p. 9.

⁵⁸ Id. at 8.

⁵⁹ Records, p. 162.

⁶⁰ G.R. No. 233747, December 5, 2018.

⁶¹ *People v. Manansala*, G.R. No. 229509, July 3, 2019.

⁶² *People v. Ismael*, 806 Phil. 21 (2017).

⁶³ *People v. Nandi*, 639 Phil. 134 (2010).

The prosecution failed to prove the identity of the *corpus delicti* because of broken links in the chain of custody.⁶⁴

For the first link, PO3 Cano failed to state how he handled the two plastic sachets seized from Limbaga which were *corpus delicti* of two separate crimes. While PO3 Cano may have marked them as “JL-1” and “JL-2” which correspond to the initials JL of accused-appellant, the date, time, and place where the evidence was seized should also be indicated. This is mandated by the PNP Manual on Anti-Illegal Drugs Operation and Investigation.⁶⁵ PO3 Cano’s non-observance of the laid-down procedure failed to separate the specimen from other specimens bearing the same initial, hence, raising doubt as to their identity.

The prosecution likewise failed to account for the third and fourth link of the chain according to this Court’s pronouncement in *People v. Pajarin*.⁶⁶ To dispense with the testimony of the forensic chemist who examined the seized substance, it must be stipulated that: (1) she received the seized articles as marked, properly sealed and intact; (2) she resealed it after examination of the contents; (3) she placed her own marking on the same to ensure that it could not be tampered with pending trial; and (4) she took the precautionary steps to preserve the integrity and evidentiary value of the seized items. The admissions contained in the Order⁶⁷ dated August 30, 2012 of the RTC regarding FCO Salinas’ proposed testimony are as follows:

1. That she is an expert witness as Forensic Chemical Officer of the PNP Crime Laboratory;
2. That a request for laboratory examination together with the specimens was submitted to the PNP Crime Laboratory Office 7 and were received by PO1 Pangatungan;
3. That PO1 Pangatungan forwarded them to FCO Salinas who conducted the examination and reduced the examination into writing through Chemistry Report No. D-743-2011;
4. That FCO Salinas can identify the specimen subject matter of the examination; and
5. That Chemistry Report No. D-743-2011 is subscribed under oath as mandated by R.A. No. 9165.⁶⁸

The foregoing stipulations fall short of the required showing of precautionary steps taken during the pre-qualitative examination and post-qualitative examination of the specimens. FCO Salinas should have testified or stipulated on the condition of the specimens when she received them prior to their examination.

⁶⁴ See *People v. Carlit*, 816 Phil. 940 (2017).

⁶⁵ See *People v. Otico*, G.R. No. 231133, June 2, 2018.

⁶⁶ 654 Phil. 461 (2011).

⁶⁷ Records, pp. 69-70.

⁶⁸ Id.

seized items after examination of their contents; (b) whether or not she made her own marking on them to prevent tampering before they are presented in court; (c) the place where the specimens were kept after the qualitative examination; and (d) the possibility of other people having access to the specimens.

The abovementioned lapses on the source, identity, and integrity of the drugs allegedly seized from Limbaga fall short of the required evidence to prove her guilt beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 24, 2019 of the Court of Appeals in CA-G.R. CEB CR-HC No. 02540 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Josephine Limbaga y Caban a.k.a. "Nanay" is **ACQUITTED** on reasonable doubt, and is **ORDERED** to be **IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause.

Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Resolution.

SO ORDERED."

By authority of the Court:

Misa DC Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court

JB 11/25/20

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COURT OF APPEALS
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6000 Cebu City

The Presiding Judge
Regional Trial Court
Branch 29, Toledo City
(Crim. Cases Nos. TCS-7273 and 7274)

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