



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **07 October 2020** which reads as follows:*

“**G.R. No. 247827 (People of the Philippines v. April Rose Cabais y Vargas)**. – This is an appeal¹ from the Decision² dated January 11, 2019 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09937. The assailed CA Decision affirmed the Regional Trial Court (RTC) Decision³ dated August 17, 2017 finding April Rose Cabais y Vargas (accused-appellant) guilty beyond reasonable doubt of violating Sections 5⁴ and 11,⁵ Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Facts

This case stemmed from two separate Informations⁶ filed before the RTC of Guagua, Pampanga charging accused-appellant with violation of Sections 5 and 11, Article II of RA 9165, to wit:

¹ *Rollo*, pp. 43.

² *Id.* at 3-42; penned by Associate Justice Amy C. Lazaro-Javier (now a member of the Court) with Associate Justices Remedios A. Salazar-Fernando and Marie Christine Azcarraga-Jacob, concurring.

³ *CA rollo*, pp. 61-72; penned by Judge Jonel S. Mercado.

⁴ SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

⁵ SECTION 11. Possession of Dangerous Drugs. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x.

⁶ Records, p. 3; Criminal Case No. G-17-12263 is for violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs (Records, p. 3), while Criminal Case No. G-17-12264 is for violation of Section 11, Article II of RA 9165 or Illegal Possession of Dangerous Drugs.

1/14

[I.] Information dated May 15, 2017 in Criminal Case No. G-17-12263 for violation of Section 5, Article II of RA 9165:

That on or about 12th day of May 2017, in the Municipality of Lubao, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being a person authorized to sell any dangerous drug, did then and there willfully, unlawfully, and knowingly sell to a poseur-buyer one (1) heat-sealed transparent plastic sachet of methamphetamine hydrochloride, commonly known as shabu, weighing 0.139 of a gram and with markings A1(FAS), more or less, a dangerous drug.

Contrary to law.⁷

[II.] Information dated May 15, 2017 in Criminal Case No. G-17-12264 for violation of Section 11, Article II of RA 9165:

That on or about 12th day of May 2017, in the Municipality of Lubao, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law to possess, did then and there willfully and unlawfully have in his possession and under his control six (6) pieces heat-sealed plastic sachet with corresponding weight and markings: (i) A2 (AMU-1) 0.066, (ii) A3 (AMU-2) 0.060, (iii) A4 (AMU-3) 0.096, (iv) A5 (AMU-4) 0.077, (v) A6 (AMU-5) 2.433 of a gram, and (vi) one (1) heated-sealed striped plastic straw with color pink with markings AMU-6 containing one (1) heat-sealed transparent plastic with white crystalline substance weighing 0.131 with markings AMU-6A gram, more or less, which when examined gave positive result for the presence of Methamphetamine Hydrochloride (shabu), a dangerous drug.

Contrary to law.⁸

Version of the Prosecution

The prosecution alleged that on May 12, 2017, at around 11:40 a.m. Police Superintendent Monico Cadayona (PSupt. Cadayona) held a meeting with the members of the Lubao Police Station Drug Enforcement Team to conduct a buy-bust operation against accused-appellant based on the information given by a certain Arlene Dela Cruz (Arlene). Arlene who, was earlier arrested for violation of Sections 5 and 11, Article II of RA 9165, revealed that she was about to meet up with accused-appellant in front of a resort at around 1:00 p.m. of the same

⁷ *Rollo*, p. 4.

⁸ *Id.* at 5.

day.⁹ The police officers formed a team with PO1 Francis Sanchez (PO1 Sanchez) as the *poseur*-buyer and PO2 Adrian Umlas (PO2 Umlas) as one of the back-up officers.¹⁰

When the team arrived at the target place, PO1 Sanchez noticed accused-appellant standing in front of Rhedelyn Resort. Then, he introduced himself as a friend of Arlene who wanted to buy *shabu*. Upon receiving a five hundred pesos bill from PO1 Sanchez, accused-appellant fished out a plastic sachet containing white crystalline substance and handed it to the former. In turn, PO1 Sanchez grabbed accused-appellant's hand and introduced himself as a police officer. The back-up officers rushed to the area and arrested accused-appellant.¹¹

PO2 Umlas confiscated from accused-appellant a coin purse which contained four small plastic sachets of white crystalline substance. The buy-bust team brought accused-appellant and the seized items to the Police Station. There, it conducted an inventory of the recovered items in the presence of the *barangay* officials and a media representative. Thereafter, accused-appellant and the seized plastic sachets of suspected *shabu* were brought to the crime laboratory for examination. Upon examination, the contents of the seized plastic sachets tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.¹²

Version of the Defense

In her defense, accused-appellant denied the allegations against her. She personally knew PO1 Sanchez and PO2 Umlas prior to the May 12, 2017 incident as they were officers of Lubao Police Station where her live-in partner was detained. On May 12, 2017, at around 11:00 a.m. she was at Rhedelyn Resort with her two children when PO1 Sanchez and PO2 Umlas arrested her. She was pregnant then. The police officers brought her, along with her children, to the police station where she was charged with selling and possessing illegal drugs.¹³

The defense and the prosecution entered into a stipulation regarding the statements of the following additional defense witnesses: (a) Allan Manganti, an employee of Rhedelyn Resort, who asserted that he saw what happened when accused-appellant was arrested; and (b)

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.* at 7-8.

¹² *Id.*

¹³ *Id.* at 13.

accused-appellant's two children, namely: Zyra Claire and Mac Adam, who stated that the police officers were not able to buy or take from accused-appellant's possession any sachet of *shabu*.¹⁴

The RTC Ruling

In the Decision¹⁵ dated August 17, 2017, the RTC found accused-appellant guilty as charged. In Criminal Case No. G-17-12263 for Illegal Sale of Dangerous Drugs, accused-appellant was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. In Criminal Case No. G-17-12264 for Illegal Possession of Dangerous Drugs, accused-appellant was sentenced to suffer the penalty of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of ₱300,000.00.¹⁶

The CA Ruling

On January 11, 2019, the CA affirmed accused-appellant's conviction. The CA held that there was a valid buy-bust operation and warrantless arrest. Further, the chain of custody was not broken.

Hence, the instant appeal.

The Issue

Whether the CA erred in affirming accused-appellant's conviction.

The Court's Ruling

The appeal is meritorious.

It is well-settled that the Court will not disturb the trial court's findings of fact especially when affirmed by the CA unless the trial court is shown to have overlooked, misapprehended or misapplied any fact or circumstance of weight and substance.¹⁷

After judiciously reviewing the records of the case, the Court finds that the RTC overlooked and misapprehended the following factual circumstances: (1) there are material inconsistencies in the statements of

¹⁴ *Id.* at 14.

¹⁵ *CA rollo*, pp. 61-72; penned by Judge Joncl S. Mercado.

¹⁶ *Id.* at 72.

¹⁷ *People v. ZZZ*, G.R. No. 228828, July 24, 2019; *People v. Agaiot.*, G.R. No. 220884, February 21, 2018.

PO1 Sanchez and PO2 Umlas regarding the facts surrounding the sale transaction of illegal drugs; (2) the police officers committed several procedural lapses in the custody of the seized illegal drugs and there was no proof of any precautionary measures taken by the custodian of the seized items from the time of their confiscation until their presentation to the RTC; (3) the chain of custody was broken; and (4) the prosecution's admission of the statements of the defense witnesses that the police officers were not able to buy or take from accused-appellant's possession any sachet of *shabu*.

The alleged buy-bust operation is highly dubious as it is beyond logic that PO1 Sanchez and accused-appellant would readily recognize each other as the buyer and seller of dangerous drugs *sans* previous arrangement. It should be noted that, based on the prosecution's allegations, it was Arlene who previously had an arrangement with accused-appellant concerning the alleged drug transaction. It is even more preposterous that accused-appellant was just alone in front of the resort waiting for the *shabu* buyer as claimed by the police officers. It must be pointed out that accused-appellant was seven months pregnant and she brought her two children with her to Rhedelyn Resort. What is believable is the defense's version that accused-appellant and her children were inside the hotel when she was arrested by the police officers and was brought to the room where she and her children were booked.¹⁸ It was when they were inside the room that the police officers started searching accused-appellant's bag.¹⁹ This version was corroborated by the statements of the following defense witnesses: (a) Allan Manganti, an employee at Rhedelyn Resort; and (b) Zyra Claire and Mac Adam, accused-appellant's children.²⁰

Also, PO1 Sanchez testified that he already saw accused-appellant prior to the conduct of the alleged buy-bust operation because they were the ones who arrested accused-appellant's live-in partner.²¹ However, he contradicted his own statement when he testified that he did not know accused-appellant as the they were not the police officers who arrested her live-in partner, *viz.* :

Atty. Galacgac:

Q: Now Mr. Witness, before May 12, 2017, did you already

¹⁸ TSN, August 10, 2017. pp. 7-8.

¹⁹ *Id.*

²⁰ *Id.* at 24-30.

²¹ *Id.* at 21-22.

personally see the accused April Rose Cabais?

A: Yes, sir.

Q: And why were you able to see her?

A: Because her former live-in partner was arrested by us for the same case she was charged sir.²² (Emphasis supplied)

x x x x.

Atty. Galacgac:

Q: At that time the accused April Rose Cabais sold *shabu* to you, she already know you that you are a police officer?

A: No, sir, she does not know.

Q: Isn't it a while ago you said that you personally saw her because her husband was previously arrested at your office?

A: Yes, sir. Actually, sir, we were not the police officers who arrested the husband of April Rose Cabais. At that time, there were members of the drug enforcement unit who are different from the members today.²³ (Emphasis supplied)

Furthermore, the members of the buy-bust team failed to take precautionary measures from the time of seizure of the alleged illegal drugs up to their presentation in court. The police officers failed to present evidence as to how the sachets of *shabu* were stored, where they were stored, what was done to prevent any tampering, switching, planting and contamination thereof, who handled the seized items, and how they were separated from other evidence.

To stress, to successfully prosecute a case for Illegal Sale of Dangerous Drugs the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereof.²⁴ On the other hand, to prove a case for Illegal Possession of Dangerous Drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.²⁵ In prosecutions involving narcotics, the narcotic substance itself

²² *Id.* at 21.

²³ *Id.* at 22.

²⁴ *People v. Rogelio Yagao*, G.R. No. 216725, February 18, 2019.

²⁵ *People v. Villarta*, G.R. No. 217887, March 14, 2018.

constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.²⁶

In *People vs. Sipin*²⁷ the Court reiterated the links that must be established in the chain of custody in a buy-bust operation, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers; the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the Court.

In this case, the prosecution failed to establish the required chain of custody of the seized illegal drugs.

First, PO1 Sanchez admitted that he kept the allegedly seized plastic sachets of *shabu* in his pocket after the items were handed to him by accused-appellant. This act of placing the plastic sachets of *shabu* in his pocket and not even in a separate plastic or evidence bag undermined the integrity of these items.²⁸

Second, the markings of the seized plastic sachets of *shabu* were rendered highly suspect by the fact that PO1 Sanchez and PO2 Umlas already knew the complete name of accused-appellant. However, none of the alleged seized plastic sachets were marked with accused-appellant's initials. Instead, the seized plastic sachets allegedly recovered in the coin purse were marked with PO2 Umlas' initials, "AMU-1 to "AMU-6"; while the seized plastic sachet allegedly bought by PO1 Sanchez was marked with his initials, "FAS." PO1 Sanchez once again proved his propensity to lie when he testified that he marked the item as "BB-FAS", but upon examination of the evidence, no "BB" marking was found therein; thus:

Public Prosecutor Teodoro:

Q: You mentioned about the specimen sold by the accused in these cases?

A: Yes, madam.

²⁶ *People v. Malabanan*, G.R. No. 241950, April 10, 2019, citing *People v. Suan*, 627 Phil. 174-193.

²⁷ G.R. No. 224290, June 11, 2018, 866 SCRA 73.

²⁸ See *People vs. Dela Cruz*, G.R. No. 205821, October 1, 2014, 744 Phil. 816-837.

Q: How would you be able to identify the same?

A: I placed my initial, madam, BB-FAS.

x x x x.

Atty. Galacgac:

Q: Mr. Witness, you stated that you were able to buy a sachet containing suspected shabu from the accused?

A: Yes, sir.

Q: And you put the marking BB-FAS, is that correct?

A: No, sir I was confused I put the initial FAS but the BB was not.

Q: So you are changing your answer now, the only marking that you placed on the said specimen are the letters FAS?

A: Yes, sir.²⁹

PO1 Sanchez' inability to recall such simple detail as the letters marked on the sachet of *shabu* mars his credibility as a witness and the integrity of evidence.

Third, the police officers failed to indicate on the seized items the dates as to when they were allegedly confiscated, in violation of Section 2.35 Chapter 2 of the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigations (PNP Manual). The PNP Manual requires the police officers to mark the evidence with the date, time and place of confiscation. The failure of the police officers to indicate these details on the seized items does not rule out the possibility that the items were outsourced evidence which clearly affected the integrity of the sachets of *shabu* allegedly confiscated from accused-appellant.

Fourth, the police officers failed to explain why the items stated in the inventory receipt were not yet marked despite their claim that they conducted the markings on the plastic sachets before conducting the inventory. PO2 Umlas testified:

²⁹ TSN, July 12, 2017, pp. 14-16.

Atty. Galacgac:

Q: What happened first was it the signing of this Inventory Receipt or the markings of the seized items that you recovered from the accused?

A: The marking of the items was made first before the preparation of the inventory of evidence, sir.

x x x x

Q: Would you agree with me, Mr. Witness that the items stated in this Inventory Evidence do not mention any markings that you placed on the said items?

Court Interpreter:

The witness is reading the Inventory of Evidence turned over to him.

A: None, sir.

Q: In other words, at the time you prepared this Inventory Receipt there was no markings yet on the items, is that correct?

A: At the time that the Inventory of Evidence was prepared, the items were already marked, it is just that the marking was not mentioned in that document, sir.

In the same manner, PO1 Sanchez could not explain why the inventory receipt did not indicate the marking in the alleged seized items, thus:

Atty. Galacgac:

Q: Exhibit I of the prosecution denominated as Inventory of Evidence, is this the inventory receipt that you are referring to?

A: Yes, sir.

Q: Which came first, was it the marking of the drug item allegedly seized from the accused or the preparation and signing of that document?

A: The marking of the items, sir.

X X X X .

Q: Am I correct that there was no mention of whatever marking on the said item, Mr. Witness? Meaning that the letters FAS were not mentioned in this?

A: Yes, sir.

Fifth, damaging evidence against the prosecution is the inconsistency on the date of delivery of the Request for Laboratory Examination³⁰ together with the seized plastic sachets of *shabu* and the Chemistry Report No. D-210-2017 RCLO3.³¹ While the Request for Laboratory Examination reveals that SPO2 Munsayac and PO1 Sanchez delivered the specimens at 6:50 in the evening of May 13, 2017,³² the Chemistry Report No. D-210-2017 RCLO3 indicated that the forensic chemist received the items at 6:50 in the evening of May 12, 2017 and the examination of the plastic sachets of *shabu* was completed at 8:50 p.m. of May 12, 2017. The police officers failed to offer an explanation as to this discrepancy of the delivery time. These details should not just be considered as trivial matters in the absence of a substantial explanation as they are material in the chain of custody which could affect the identity of the sachets of *shabu*. These inconsistencies create clouds of doubt on whether the items were delivered at 6:50 p.m. of May 13, 2017 or May 12, 2017. Whatever may be the items delivered on these different dates, the Court will not speculate in the absence of proof and explanation on the part of the police officers.

Assuming *arguendo* that the items were delivered and received on the same date following the Chemistry Report, the question left unanswered are: What happened to the sachets of *shabu* between 1:00 p.m. to 6:50 p.m. or almost six hours from seizure? What container was used to store them and separate them from other pieces of evidence? What safekeeping mechanism was taken by the police officers to avoid any contamination or substitution of items? After the forensic chemist tested these items, where did she store the evidence to prevent any switching or contamination? Who delivered these items to the RTC for presentation and identification? And how were they delivered to the RTC?

³⁰ Records, pp. 22-23.

³¹ *Id.* at 26.

³² *Id.* at 23.

Although the police officers complied with the witness requirement under RA 10640³³ as the inventory was witnessed by accused-appellant, a *barangay* official and a media representative, it is worth emphasizing that the preservation of the seized items does not end in the inventory alone, but must continue until their presentation and identification in court. The blunders committed by the buy-bust team cast doubt on the integrity and evidentiary value of the plastic sachets of *shabu* allegedly confiscated from accused-appellant. Indeed, the very identity of the subject *shabu* cannot be established with certainty by mere testimony of the members of the buy-bust team. Otherwise, the prosecution of drug cases will entirely depend on the self-serving statements of the police officers or any other law enforcers, creating dangerous implications to the enforcement of RA 9165.

Finally, the Court is more convinced to acquit accused-appellant when the prosecution admitted, during stipulation of facts, that no single sachet of *shabu* was recovered by the police officers from her. Apparently, the prosecution and the defense stipulated on the statements of accused-appellant's children that PO1 Sanchez and PO2 Umlas were not able to confiscate a single plastic sachet of *shabu* from accused-appellant. This admission by the prosecution added a reasonable doubt whether or not there was really a buy-bust operation.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 11, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09937 is **REVERSED** and **SET ASIDE**. Accused-appellant April Rose Cabais y Vargas is hereby **ACQUITTED**.

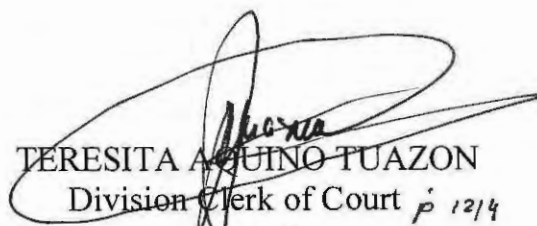
The Superintendent of the Correctional Institution for Women, Mandaluyong City is **ORDERED** to : (a) cause the immediate release of April Rose Cabais y Vargas unless she is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

³³ Entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," approved on July 15, 2014, and became effective on August 7, 2014.

SO ORDERED.” (BALTAZAR-PADILLA, J., on leave.)

By authority of the Court:


TERESITA AQUINO-TUAZON
Division Clerk of Court p 12/4
04 DEC 2020

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HON. PRESIDING JUDGE (reg)
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(Crim. Case Nos. G-17-12263 to G-17-12264)

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*For this resolution only
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