



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**CHRISTOPHER DELA RIVA
y HORARIO,**

Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 212940

Present:

CARPIO, *J.*, Chairperson,
DEL CASTILLO,
PEREZ,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

16 SEP 2015

Alfred M. Pineda

x -----

DECISION

MENDOZA, *J.*:

Challenged in this petition for review is the February 13, 2014 Decision¹ of the Court of Appeals (*CA*), in CA-G.R. CR-HC No. 05895, which affirmed the August 30, 2012 Decision² of the Regional Trial Court, Branch 75, Olongapo City (*RTC*), finding the petitioner, accused Christopher Dela Riva y Horario (*Dela Riva*), guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On April 29, 2009, an Information was filed charging accused with violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the Information reads:

* Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 2191, dated September 16, 2015.

¹ *Rollo*, pp. 45-56 (Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Zenaida T. Galapate-Laguilles).

² Records, pp. 451-465 (Issued by Presiding Judge Raymond C. Viray).

That on or about the 28th day of April 2009, at about 6:00 in the morning, in Brgy. Calapacuan, Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously without any lawful authority, give away, deliver and sell one (1) heat-sealed transparent plastic sachet weighing 1.3095 grams of Methamphetamine Hydrochloride, known as 'shabu,' a dangerous drug, to a poseur-buyer for One Thousand (Php1, 000.00) Pesos marked money.

CONTRARY TO LAW.³

On June 3, 2009, Dela Riva was arraigned and he pleaded not guilty to the offense charged.

Prosecution version and evidence

On April 27, 2009 a confidential agent reported to the officers at the National Headquarters Special Enforcement Services, Philippine Drug Enforcement Agency (PDEA) Headquarters at Brgy. Piñahan, Quezon City that a certain Chris, who turned out to be appellant herein, is doing illegal drug activities at Brgy. Calapacuan, Subic, Zambales.

Acting on the report, a briefing was conducted to entrap the suspect. IO1 Enrique Lucero was assigned as the poseur-buyer. The briefing was followed by a pre-operation report and an authorization to operate. A Certificate of Coordination was then issued by the PDEA National Operating Center. Such a document is issued whenever an operation is to be conducted outside the national headquarters. Boodle money in the amount of P60,000.00 was prepared with two (2) ₱500.00 as the actual money placed on top of the bundle. Said amount was for ten (10) grams of shabu as agreed between the confidential agent and herein appellant.

Said buy-operation was intended for two (2) targets, appellant herein and a certain Jun Magsaysay. After the preparation was done, the team proceeded from Manila to Subic on April 28, 2009. The team stopped at Angeles City around 8 o'clock in the evening and stayed there for about three (3) hours because the confidential agent received a text message from appellant that the ten (10) grams of shabu [was] not yet complete.

At 2 o'clock, the team then proceeded to Subic and arrived at the target area around 5 o'clock. The specific location was at Maniago Street, Brgy. Calapuan, Subic. Those who went to Maniago Street were Agent Lucero, Agent Tumabini, Agent Fajardo and the civilian asset. The rest of the team or the back-up team stayed at the National Highway at Brgy. Calapuan.

³ As quoted in the CA Decision, *rollo*, p. 46.

The team waited at the vehicle near a residential place with a store and after a few moments, appellant appeared. The confidential agent and Agent Lucero approached appellant and introduced Agent Lucero. Agent Lucero then asked appellant for the agreed item to which the latter replied, "*Andito na pare pero kulang pa.*" Appellant then invited them to go to a certain Abu to get the rest of the items and then proceeded to Abu's house.

The trio walked to the house of "Abu" which was about fifteen (15) to twenty (20) meters away. The house is located in a squatter area and the walls were dilapidated. The three (3) entered the house which has no bedroom but with a curtain to separate some parts of it. Inside, they saw two (2) persons having a pot session.

Agent Lucero then asked appellant for the rest of the items who upon saying "sa akin na lang muna pare" handed to him from his pocket a small transparent plastic sachet. Agent Lucero then put the small sachet in the right pocket of his pants. Agent Lucero again asked for the rest and appellant asked for the payment. Agent Lucero then handed to appellant the boodle money which was placed in an envelope.

While appellant is opening the envelope, Agent Lucero made a missed call to their team leader but after a few seconds they heard a voice shouting from the outside, "Abu-Abu." The two (2) persons who were having pot session inside the house then rushed to the door and run outside and Agent Lucero introduced himself to appellant as PDEA Agent and arrested him. The back-up team then entered the house to assist in the arrest while others chased the two (2) persons who ran away. However, they were not able to catch them.

The team saw in plain view some paraphernalia inside the house and these were two (2) pieces aluminum foil, improvised water pipe, five (5) pieces disposable lighters and several transparent plastic sachets. They confiscated said items.

After informing appellant of his rights, they immediately left the area. The inventory was conducted at the National Headquarters of PDEA for security and safety considerations. The inventory was witnessed and also signed by a Barangay Kagawad while photographs were also taken.

A request for the laboratory examination of the specimen yielded positive results for the presence of methamphetamine hydrochloride. Appellant's urine was also tested and yielded positive for the presence of methamphetamine hydrochloride.⁴

⁴ Brief for the Plaintiff-Appellee, CA *rollo*, pp. 111-113.

The prosecution offered the following exhibits as evidence:

- Exhibit "A" – Pre-operation Report⁵
- Exhibit "B" - Authority to Operate⁶
- Exhibit "C" – Certificate of Coordination⁷
- Exhibit "D" to "E" – marked money⁸
- Exhibit "F" – white window envelope and boodle money
- Exhibit "G" – Inventory of Seized Evidence⁹
- Exhibit "H" – photograph of witnesses signing the inventory¹⁰
- Exhibit "I" – photograph of seized drug and paraphernalia¹¹
- Exhibit "J" and series – shabu and drug paraphernalia
- Exhibit "K" to "K-1" – Letter Request for Drug Testing¹²
- Exhibit "L" – Chemistry Report¹³
- Exhibit "M" – Letter Request for Drug Testing¹⁴
- Exhibit "N" – Letter Request for Physical/Medical Examination¹⁵
- Exhibit "O" – Result of the Physical Examination¹⁶
- Exhibit "P" and series – Sworn Statement of the Poseur-Buyer¹⁷
- Exhibit "Q" – PDEA Certification¹⁸
- Exhibit "R" to "R-1" – Booking Sheet and Arrest Report¹⁹
- Exhibit "S" and series – Chemistry Report for Drug Test²⁰

Defense Version and evidence

According to the accused, xxx he was already detained at the PDEA on April 28, 2009 at around 6:00 o'clock in the morning, as he was arrested on April 26, 2009 at about 10:00 in the afternoon at Barangay Calapacuan, Subic, Zambales, while at the house of his grandfather Ronnie Horario. At that time, he received a cellphone call from a certain Jovann inviting him to go to the casino, and they agreed that the latter would fetch accused. Accused decided to go home at Rizal, San Marcelino, Zambales, because Jovann was not replying to his text message. While he was waiting for a passenger jeep, Jovann arrived on board a CRV, and invited accused to board. Inside the vehicle were four passengers including the driver, and Jovann introduced accused to them. They went to SBMA and accused thought that they would play at the casino, but instead they travelled through SCTEX and accused was told that they would play casino at Angeles City.

⁵ Records, p. 155.

⁶ Id. at 156.

⁷ Id. at 157.

⁸ Id. at 21.

⁹ Id. at 158.

¹⁰ Id. at 159.

¹¹ Id.

¹² Id. at 160.

¹³ Id. at 161.

¹⁴ Id. at 162.

¹⁵ Id. at 163.

¹⁶ Id. at 164.

¹⁷ Id. at 165-168.

¹⁸ Id. at 169.

¹⁹ Id. at 170-171.

²⁰ Id. at 172.

Accused felt nervous and started asking where they were really heading. The driver told him to just relax and they will soon reach their destination. Accused tried to control his fear as he was with a friend, and from then on they used to play at the Oriental Casino, SBMA, every weekend.

Accused was brought at the PDEA Headquarters in Quezon City, and when he asked why they were there, Jovann told him to be silent. The man seated beside accused gave him a handcuff and told him to wear it. Accused asked what his violation was, but a gun was poked at his chest. A man told him in a loud voice to wear the handcuffs, and he obeyed. He was investigated inside an office and was told that he was selling drugs which he denied. After asking his personal circumstances he was asked for a "palit-ulo" meaning, that he should produce another person selling drugs in exchange for his release, but accused denied any knowledge of anyone involved in drug trade.

Accused was then told to sign the Booking Sheet Arrest Report which he did. He just filled up the portion for his personal circumstances and name of relatives but the other entries were provided by the investigator, and then he signed the document. The pictures were taken on April 27, 2009 prior to the alleged arrest on April 28, 2009. Agent Enrique Lucero was not among those in the vehicle and he first saw him at the office. Accused is not aware of the execution of the Inventory of Seized Items and he did not see the Kagawad who allegedly signed it. At the PDEA Compound were several men in uniform and one of them investigated accused. He did not see Jovann anymore. Accused denied that the items in the inventory were taken from him. Accused former counsel demanded copy of the logbook and blotter of his departure and arrival to prove that he was arrested on April 26 and not on April 28, 2009, but nothing happened to the request.²¹

Dela Riva offered the following exhibits as evidence:

Exhibit "1" – Booking Sheet and Arrest Report

Exhibit "2" – Pictures of the accused taken on April 28, 2009²²

The RTC Ruling

On August 30, 2012, the RTC convicted Dela Riva for the offense charged, stating that the prosecution was able to establish his guilt with moral certainty based on the consistent, positive, straightforward, convincing, and credible testimonies of the police witnesses and the supporting documentary and object evidence it presented. The RTC found that all the elements of the crime were established, to wit: 1) the identity of the buyer and the seller, the object and consideration; and 2) the delivery of the thing sold and the payment thereof.

²¹ Brief for Appellant, CA *rollo*, pp. 42-43.

²² Records, p. 360.

The RTC did not give weight to the defense of frame-up put up by Dela Riva as it could not prevail over the positive declaration of the poseur-buyer and the compelling documentary evidence shown by the prosecution. The trial court opined that the procedural lapse committed by the apprehending team with respect to the requirements under Section 21 of R.A. No. 9165 was not fatal to its cause because the integrity and the evidentiary value of the seized items were properly preserved and safeguarded by the apprehending officers.

The RTC stated that the chain of custody of the seized drug, which involved only one (1) sachet of *shabu*, was continuous and unbroken. In the absence of proof of tampering of evidence, bad faith and ill will on the part of the buy-bust team, the police officers were to be presumed to have regularly performed their duties. The RTC, thus, disposed:

WHEREFORE, the Court finds CHRISTOPHER DELA RIVA GUILTY beyond reasonable doubt of Violation of Sec. 5, RA 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 plus cost, without subsidiary imprisonment in case of insolvency.

The accused shall also suffer the accessory penalties under Section 35, RA 9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The sachet of shabu marked Exh. 'J' of the Prosecution is ordered confiscated in favor of the government and to be disposed of in accordance with law.

SO DECIDED.²³

The CA Ruling

On appeal, the CA affirmed the decision of the RTC. It basically stated that the integrity of the drugs seized from the accused was preserved and that the chain of custody of the subject drugs was unbroken. The CA pointed out that the confiscated drugs remained under the care of PDEA Agent Lucero (*Agent Lucero*) until he reached the PDEA National Headquarters at Barangay Piñahan, Quezon City. He immediately marked the same with his signature in the presence of the accused and Barangay Kagawad Jose Ruiz before turning it over to the crime laboratory for examination. Subsequently, the same sachet bearing the same markings was completely examined within 24 hours of seizure by Chemist Engineer Elaine E. Erno and found to be positive for *methamphetamine hydrochloride*, a dangerous drug.

²³ As quoted in the CA Decision, *rollo*, pp. 45-46.

The CA pointed out that non-compliance with the strict directive of Section 21 of R.A. No. 9165 was not necessarily fatal to the prosecution case as long as there were justifiable grounds for the lapses committed and the integrity and evidentiary value of the evidence seized were preserved.

The CA added that when the prosecution presented the transparent plastic sachet before the Court, Agent Lucero positively identified it as one which came from Dela Riva. The appellate court stated that the integrity of the evidence was presumed to have been preserved unless there was a showing of bad faith ill will or proof that the evidence had been tampered with. Dela Riva had the burden of showing that the evidence was tampered or meddled with to overcome the presumption of regularity in the handling of the exhibits by public officers and in the discharge of their duties. Unfortunately, Dela Riva failed to produce convincing proof that there was tampering of the evidence of the prosecution.

Regarding the defense of frame-up and inconsistencies in the manner of operation, the CA opined that they could not prevail over the positive, straightforward and convincing testimonies of the police operatives who performed their duties regularly, in accordance with law and without any improper motive. The arrest of Dela Riva was made in the course of an entrapment, following a surveillance operation, normally performed by police officers in the apprehension of violators of the Dangerous Drugs Act. The CA concluded that there was a consummated sale between the poseur-buyer and Dela Riva. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the: 1) August 30, 2012 Decision; and 2) October 18, 2012 Order of the Olongapo City, Regional Trial Court, Branch 75, in Criminal Case No. 135-09 convicting Christopher Dela Riva y Horario for violation of Section 5 of Republic Act No. 9165, are hereby AFFIRMED. No costs.

SO ORDERED.²⁴

Aggrieved, Dela Riva filed the subject petition seeking the reversal of the CA decision and a judgment of acquittal based on the following

GROUNDS

- I. THERE WAS A MISAPPRECIATION OF FACTS, WHICH IF CONSIDERED, WOULD OVERTURN THE DECISION RENDERED BY THE COURT OF APPEALS.**

²⁴ Id. at 55.

- II. THERE WAS FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE DRUGS ALLEGEDLY SEIZED FROM ACCUSED-APPELLANT.**
- III. THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE GUILT OF ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.²⁵**

Position of the Accused

Accused Dela Riva mainly argues that the prosecution failed to establish the identity and the integrity of the drugs seized. He claims that the PDEA operatives disregarded the procedural rules under Section 21 of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 in conducting the seizure and identification of the drugs. He submits that the prosecution committed the following errors, which if properly considered, would not establish his guilt with moral certainty:

- 1) There was no clear and definite testimony of IOI Lucero as to the marking of the seized items. He mentioned only in his direct-examination that he inspected the items confiscated in their vehicle. Notably, the said testimony constituted the totality in the marking of the seized evidence.
- 2) Taking of photos and inventory of illicit materials purportedly seized from appellant and in the crime scene was not conducted in the place where the purported arrest was effected. This is not surprising since, in actuality, the PDEA operatives in the instant case had never conducted an arrest. Instead what they have done was to frame-up the petitioner;
- 3) No representative of the Department of Justice or of the media was present during the marking, taking of pictures and inventory of the illicit materials purportedly seized from petitioner and in the crime scene;
- 4) The barangay official, who the prosecution claims to have been present during the inventory, was not present during the arrest of petitioner, in violation of what the law enjoins law officers to follow;
- 5) There was a violation by the PDEA operatives of their duty to deliver petitioner to the nearest police station or jail without unnecessary delay which is in this case, their regional office in Pampanga; and
- 6) There was no written explanation as to why a) said marking, taking of pictures and inventory were not done in the place mandated by law for the same to be done; b) no representatives

²⁵ Id. at 18-19.

from the Department of Justice or from the media were present; and c) the barangay official, who the prosecution claims to have been present during the inventory, was not present during the arrest of petitioner.²⁶

Position of the Prosecution

The Office of the Solicitor General (*OSG*) argues that the factual findings of the CA were supported by substantial evidence and could no longer be reviewed in the petition for review filed by Dela Riva. His guilt was proven beyond reasonable doubt when the prosecution was able to establish the elements for the illegal sale of a dangerous drug, to wit: 1) the identity of the buyer and the seller, the object and consideration; and 2) the delivery of the thing sold and payment therefor. The positive, straightforward, convincing, and credible testimony of Agent Lucero, coupled with the physical evidence on record, are enough proof that the accused committed the offense charged.

The Court's Ruling

After a review of the evidentiary records as well as the applicable law and jurisprudence on the matter, the Court finds merit in the petition and, for said reason, renders a verdict of acquittal.

Presumption of Innocence; Burden of Proof

It is fundamental in our Constitution²⁷ and basic in our Rules of Court²⁸ that the accused in a criminal case enjoys the presumption of innocence until proven guilty. Likewise, it is well-established in jurisprudence that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof

²⁶ Id. at 36-37.

²⁷ Article III, Section 14(2) - In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

²⁸ Rule 133, Section 2. Proof beyond reasonable doubt. - In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict.

In order to survive the test for a successful prosecution of cases of illegal sale of dangerous drugs, the prosecution must be able to: 1) establish the essential elements of the crime – (a) the identity of the buyer and the seller, the object and consideration of the sale, and (b) the delivery of the thing sold and the payment therefor; and 2) strictly follow the seizure and custody procedure provided under Section 21 (1) of R.A. No. 9165 and Section 21 (a) of the IRR.

Section 21 of R.A. No. 9165 has been amended by R.A. No. 10640 (*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*). Considering that the buy-bust incident in this case transpired on April 28, 2009 and the old law was favorable to the accused, the Court shall be guided by the earlier version of Section 21 and its corresponding IRR, viz.:

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;

xxx [Emphasis Supplied]

Section 21 (a), Article II of the IRR of R.A. No. 9165, states:

xxx

(a) The apprehending office/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 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;

xxx

[Emphases Supplied]

The above procedure serves as a proper guideline for police officers involved in drug buy-bust operations in moving the seized drugs from the time of arrest and seizure up to the laboratory examination and finally to its presentation in court. The purpose of this legal process is to preserve the identity, integrity and evidentiary value of the seized drugs through an unbroken chain of custody. The chain of custody is divided into four (4) links: *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 by the forensic chemist to the court.²⁹

Chain of Custody Broken

In the case at bench, the prosecution breached the *first link* right away when the buy-bust team failed to **immediately** mark the seized drugs, conduct a physical inventory and photograph the same after the arrest of the accused and the confiscation of the seized drugs. The law requires that the marking, physical inventory and photograph be conducted **at the nearest police station or at the nearest office of the apprehending officer/team**, whichever is practicable, in case of warrantless seizures. Additionally, the law requires that the said procedure must be done **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. Surprisingly, the PDEA agents in this case failed to observe the proper procedures.

²⁹ *People of the Philippines v. Ramil Doria Dahil and Rommel Castro y Carlos*, G.R. No. 212196, January 12, 2015.

In the prosecution of illegal sale, what is essential is to prove that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*. The consummation of sale is perfected the moment the buyer receives the drug from the seller. In this case, the prosecution failed to prove that the four sachets which tested positive for shabu and eventually presented in court were the same ones confiscated by the police officers **due to its non-marking at the place where the buy-bust operation was committed at the police station.**

In *People v. Nacua*, the Court emphasized that given the unique characteristic of dangerous and illegal drugs which are indistinct, not readily identifiable, and easily susceptible to tampering, alteration, or substitution, either by accident or otherwise, **there must be strict compliance with the prescribed measures during and after the seizure of dangerous drugs and related paraphernalia, during the custody and transfer thereof for examination, and at all times up to their presentation in court.**³⁰

[Emphases supplied]

Agent Lucero stated in paragraph 13 of his affidavit that the seized drugs were **immediately** marked after he made the arrest. Yet, he gave a different statement during his testimony. He admitted that the marking, inventory and photographing of the seized drugs were all made and conducted only at the PDEA National Headquarters in Quezon City located several kilometers away from the scene of the buy-bust operation.

Q And what happened next Mr. Witness after you have completed the seizure of the item in a clean view and have the suspect arrested?

A We immediately left the area, and proceeded to the vehicle and after proceeding to the vehicle, we inspect the items confiscated.

Q Mr. witness, where were you now when you inspect all the items?

A At the vehicle, ma'am.

Q Which was parked outside of the house of the accused?

A Yes, ma'am.

Q Did you prepare an inventory of all the items that were seized and the item that you actually purchased?

A Yes, ma'am.

Q And where was the inventory prepared?

A It was prepared at the National Headquarters in Manila, ma'am.³¹

³⁰ *People of the Philippines v. Sander Dacuma y Lunsod*, G.R. No. 205889, February 4, 2015.

³¹ TSN, August 19, 2009, p. 21.

On cross, he testified as follows:

Q And Mr. witness, this drug items were inventoried and photographed according to you at the national office?

A Yes sir.

Q And who prepared this Mr. witness or who sealed these items?

A I was the one, sir.

Q Where?

A At the office, sir.

Q So, you were the one in this Exhibit "J" the plastic sachet of shabu you were the one who put this plastic tape and sealed it?

A This one sir, the crime laboratory, this one is my initial.

Q Also the other tape in the other item?

A Yes sir.³²

Contrary to his statement in his affidavit, Agent Lucero never confirmed that he conducted the marking, physical inventory and photograph of the seized items in the presence of the accused, his lawyer, a media representative or DOJ representative, or an elected official from Brgy. Calapacuan or Municipality of Subic or even the Province of Zambales. The only one present was Barangay Kagawad Jose Y. Ruiz, Jr. (*Kagawad Ruiz*) who was from Barangay Piñahan, Quezon City, where the PDEA National Headquarters was located. Kagawad Ruiz was definitely not present at the scene of the buy-bust operation.

Q And Mr. witness at the time of the preparing of this inventory and photography there was no presence of media, correct?

A None, sir.

Q No presence of the DOJ representative?

A None, sir.

Q No presence of elected Brgy. Calapacuan of Municipality of Subic?

A None, sir.

Q But according to you only the presence of Brgy. Official of Brgy. Penahan?

A Yes, sir.

Q Where this National Office is located at?

A Yes, sir.

Q Mr. witness, I will go to the Inventory, this Mr. Jose Y. Ruiz is a Brgy. Kagawad of Brgy. Penahan, do you agree?

A Yes, sir.

Q And this person was the one who witnessed the inventory?

A Yes, sir.

³² Id. at 47-48.

Q But not the seizure?

A Yes, sir.

Q So, this incorrect, witness to seizure and then below that, is the signature of Jose Ruiz, do you confirm that?

A Yes, sir.

Q So, he only witnessed the inventory that he made?

A Yes, sir.

Q And Mr. witness will you agree with me that this inventory of seized evidence is made not under oath?

A Yes sir.³³

Agent Lucero further admitted that they left Brgy. Calapacuan, Subic, Zambales, early in the morning and arrived at the PDEA National Headquarters in Quezon City at past 9:00 o'clock in the morning after a stopover for more than an hour at a gasoline station along the North Luzon Expressway (*NLEX*). Thereafter, they rested upon reaching the PDEA National Headquarters. After resting, they prepared the request for laboratory examination and conducted an inventory.

Q And at what time you arrived in the National office Mr. witness?

A Past 9 A.M. sir.

Q So, what happened when you already reached the national office at Quezon City?

A We rested sir and then we prepared the request for laboratory examination and we also made an inventory.

Q Including the photography?

A Yes, sir.

Q In your office?

A Yes, sir.

Q Not at the crime scene?

A No, sir.³⁴

[Emphases Supplied]

Records further show that Agent Lucero failed to give a credible and convincing justification for the **delay** in the marking, physical inventory and photographing of the seized items. When asked about the delay, he gave three different answers. *First*, he reasoned out that he was concerned with their security and safety; that they lacked sleep; and that there were so many operations conducted in the area.

Q And where was the inventory prepared?

A It was prepared at the National Headquarters in Manila, ma'am.

³³ Id. at 46-47.

³⁴ Id. at 45-46.

Q Why not there at the scene itself Mr. witness?

A Because we are thinking of the security, safety at the same time we are lack of sleep.

Q Mr. witness, what was it in that area you which made you fear that your safety and security was going to be threatened Mr. witness?

A Because there were so many operation conducted in that area.³⁵

Second, Agent Lucero explained that they proceeded to the National Headquarters so he could immediately prepare all the needed documents.

Q Is that the reason why from the crime scene you straight to the headquarters because you do not know where the Regional Office?

A No, sir.

Q So, what was the reason in proceeding to the National Headquarters?

A To immediately prepare all the documents needed.³⁶

Third, he immediately left Zambales upon the instruction of their team leader.

Q But was it not better if you will proceed with your regional office in San Fernando to prepare this inventory and photography instead of going to your office in Quezon City preparing this inventory and photography?

A That is the instruction of the team leader, sir.³⁷

The buy-bust team knew that PDEA had a regional office near the area but, surprisingly, they still proceeded to the National Headquarters in Quezon City on the flimsy excuse that Agent Lucero was not familiar with the address of the Pampanga Regional Office.

Q Mr. witness, do you have a PDEA Regional Office?

A Yes, sir.

Q Here in Region 3 where this Brgy. Calapacuan, Subic, Zambales, is located. Do you have a Regional Office?

A We have a Regional Office in Region 3, I am not familiar with the address, sir, it is Camp Olivas, I think, sir.

³⁵ Id. at 21-22.

³⁶ Id. at 46.

³⁷ Id.

Q Where is that Camp Olivas?

A I am not familiar with that address, sir.

Q Is it in Olongapo, Subic, Bataan, Pampanga?

A Pampanga, sir.³⁸

Unquestionably, the immediate marking of the seized drugs is the first and the most crucial point in the custodial links. The significance of this link was elaborately discussed in the recent case of *People of the Philippines vs. Beverly Alagarme y Citoy*,³⁹

With this concern for the due recording of the authorized movement and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment, the presentation as evidence in court of the dangerous drugs subject of the illegal sale is material in every prosecution for the illegal sale of dangerous drugs. This materiality derives from the **dangerous drugs** being themselves the **corpus delicti**. Indeed, proof of the corpus delicti is essential in every judgment of conviction. Without proof of the corpus delicti, there is uncertainty about whether the crime really transpired or not. **To eliminate the uncertainty, the Prosecution should account for every link in the chain of custody; otherwise, the crime is not established beyond reasonable doubt. In other words, the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 either when the dangerous drugs are missing or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.**

A reading of the record indicates that the buy-bust team did not observe the procedures laid down by Republic Act No. 9165 and its IRR. **The marking of the seized drugs or other related items immediately upon seizure from the accused is crucial in proving the chain of custody because it is the starting point in the custodial link. The marking upon seizure serves a two-fold function, the first being to give to succeeding handlers of the specimens a reference, and the second being to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence. This requirement of marking as laid down by the law was not complied with. Firstly, PO1 Mendoza simply stated that he did the marking of the confiscated items with his initials inside the Toyota Revo. Although the appellant was also inside the Toyota Revo at that time, he did not state if his marking was done within the view of the appellant, or within the view of any representative from the media, Department of Justice or any elected public official. Secondly, both he and MADAC Operative Castillo did not indicate if any media**

³⁸ Id.

³⁹ G.R. No. 184789, February 23, 2015.

or DOJ representative or elected public official had been present during the buy-bust operation and when the drugs were recovered from the appellant at the scene of the apprehension. The law unequivocally required such presence. Thirdly, there was also no showing of any inventory of the confiscated items being undertaken or prepared. The lack of the inventory was confirmed by the absence of any certificate of inventory being formally offered as evidence by the Prosecution. Lastly, the Prosecution did not produce any photographs taken of the sachets of shabu immediately following their seizure.

[Emphases Supplied]

The Court would like to stress that the prosecution had the chance to redeem their cause through the saving mechanism provided in the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165 which provides that non-compliance with the safeguards of the chain of custody would not be fatal to the prosecution's cause *if there would be a justified explanation for it*. Unfortunately, the prosecution failed to provide a credible and convincing explanation, justifying the marking, physical inventory and photographing of the seized items in the far away PDEA National Headquarters in Quezon City rather than in the nearer PDEA Regional Office in Pampanga.

The prosecution did not bother either to give a sufficient justification on why the marking, physical inventory and photographing were not done in the presence of the accused or his counsel or a media representative or a DOJ representative or an elected official who was at the crime scene. The prosecution chose to remain silent about their absence or the reason why they were not informed earlier. Indeed, the prosecution's unjustified non-compliance with the safeguards of the chain of custody constitutes a fatal procedural flaw that destroys the reliability of the *corpus delicti*.

Aside from the defect in the first link, there was also a fatal procedural lapse in the *fourth link* of the chain. Chemist Elaine Erno testified that she received the seized drugs from Agent Lucero and his request for laboratory examination. The records, however, are bereft of any testimonial or documentary evidence whatsoever as to how the seized drug was kept while in the custody of the evidence custodian until it was brought to the court. There were even no details given on the identity of the evidence custodian and how the seized drug was handled and transferred before it was presented in court. No information was given as to how the evidence custodian preserved the seized drug while it was in his/her custody.

Section 21 of R.A. No. 9165, as amended by R.A. No. 10640

Granting that the new but more stringent provisions of Section 21 of R.A. No. 9165, as amended by R.A. No. 10640,⁴⁰ are applicable, the prosecution's case would still fail. Section 21 now reads as follows:

SEC. 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance of 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 and custody over said items.

xxx xxx xxx

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a

⁴⁰ 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.

final certification shall be issued immediately upon completion of the said examination and certification;

xxx xxx xxx.

[Emphases and Underscoring Supplied]

Under the current Section 21, noncompliance of the requirements shall not render void and invalid such seizures and custody over said items as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team. It must be stressed, however, that the non-compliance must be for "justifiable grounds." In this case, the PDEA agents failed to convince the Court that they had justifiable reasons not to immediately and strictly comply with the provisions of the law so as to comply with the chain of custody requirements.


It could be that the accused was engaged in the sale of dangerous drugs. A doubt, however, lingers because the flaws in this particular link coupled with the defects in the first link are so glaring that the Court cannot ignore them as they definitely compromised the identity, integrity and evidentiary value of the seized drugs.

There being a doubt, the Court resolves it in favor of the accused.

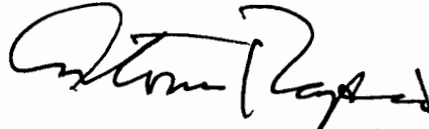
WHEREFORE, the petition is **GRANTED**. The February 13, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05895 is **REVERSED** and **SET ASIDE**. The accused, Christopher Dela Riva y Horario, is **ACQUITTED** of the crime charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is ordered to implement this decision and to inform this Court of the date of the actual release from confinement of the accused within five (5) days from receipt of copy.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:



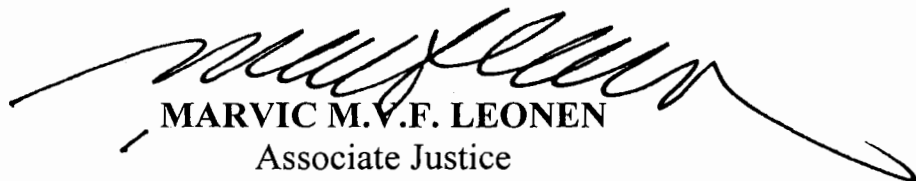
ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



MARVIC M.V.F. LEONEN
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 and the Division Chairperson's Attestation, 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.



MARIA LOURDES P. A. SERENO
Chief Justice