



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 198450

Present:

- versus -

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 MENDOZA, *and*
 LEONEN, *JJ.*

FERNANDO RANCHE HAVANA
a.k.a. FERNANDO RANCHE ABANA,
Accused-Appellant.

Promulgated:

JAN 11 2016

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Atencabato of ng estro

DECISION

DEL CASTILLO, J.:

“Statutory rules on preserving the chain of custody of confiscated prohibited drugs and related items are designed to ensure the integrity and reliability of the evidence to be presented against the accused. Their observance is the key to the successful prosecution of illegal possession or illegal sale of dangerous drugs.”¹

At issue in this case is whether appellant Fernando Ranche Havana a.k.a. Fernando Ranche Abana did in fact sell or deliver to an alleged poseur-buyer some 0.03 gram of the banned substance Methylamphetamine Hydrochloride, locally known as “shabu” on the late afternoon of November 4, 2005. The appellant insists that he never did. The prosecution asserts the contrary.

On appeal is the May 31, 2010 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00688, affirming the February 28, 2007 Decision³ of the Regional Trial Court (RTC) of Cebu City, Branch 58 finding Fernando Havana y Ranche a.k.a. Fernando Abana y Ranche (appellant) guilty of violating Section 5,

¹ *People v. Relato*, G.R. No. 173794, January 18, 2012, 663 SCRA 260, 262; *People v. Zakaria*, G.R. No. 181042, November 26, 2012, 686 SCRA 390, 391-392.

² CA *rollo*, pp. 79-90; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez.

³ Records, pp. 73-80; penned by Judge Gabriel T. Ingles (now a member of the Court of Appeals).

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Article II of Republic Act No. 9165 (RA 9165) otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

Factual Antecedents

In an Information⁴ dated November 18, 2005, the appellant was charged with illegal sale of dangerous drugs committed as follows:

That on or about the 4th day of November, 2005, at about 6:30 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without authority of law, did then and there sell, deliver or give away to a poseur[-]buyer the following:

One (1) heat-sealed transparent plastic packet containing
0.03 gram of white crystalline substance

containing Methylamphetamine Hydrochloride, locally known as “SHABU”, a dangerous drug.

CONTRARY TO LAW.⁵

Appellant put in a negative plea. Trial then followed.

The prosecution’s case is essentially erected upon the testimonies of PO2 Miguel R. Enriquez⁶ (PO2 Enriquez), SPO1 Rogelio J. Cañete, Jr. (SPO1 Cañete), and Police Chief Inspector Mutchit G. Salinas (PCI Salinas), all members of the Philippine National Police (PNP), Police Station 10, Punta Princesa, Cebu City and documentary exhibits pertaining to the buy-bust operation. The combined testimonies and the documentary exhibits tended to establish these facts:

On the afternoon of November 4, 2005, a civilian informant, one “Droga”, went to Police Station 10, Punta Princesa, Cebu City and reported to the duty officer SPO1 Vicente R. Espenido, Jr. (SPO1 Espenido) that the appellant was actively engaged in the illegal drug trade at Sitio Mangga, Punta Princesa, Cebu City. SPO1 Espenido immediately assembled a buy-bust team, with him as the team leader, the civilian asset and with PO2 Enriquez, SPO1 Cañete, and SPO1 Jasper C. Nuñez (PO2 Nuñez) as back-up. The police team designated the unnamed “civilian informant” as poseur-buyer and provided him with a ₱100.00 marked money bill, with its serial number (SN003332) noted in the police blotter,⁷ to be used for the purpose of buying *shabu* from appellant. The buy-bust operation was allegedly coordinated with the Office of the Philippine Drug Enforcement Agency (PDEA).⁸ When the police team reached the target area, the

⁴ Id. at 1.

⁵ Id.

⁶ Also referred as PO3 Enriquez in some parts of the records.

⁷ Exhibit “B.”

⁸ Exhibit “A.”

“civilian informant” went to the house of appellant and called the latter. Hidden from view, some 15 meters away from the house, the back-up operatives, PO2 Enriquez and SPO1 Cañete, saw the civilian informant talking with the appellant. Not long after, they saw the “civilian informant” handing over the marked ₱100.00 bill to the appellant, who in exchange gave to the former a plastic pack containing 0.03 gram white crystalline substance which these two suspected as *shabu*. The “civilian informant” then placed a face towel on his left shoulder to signal that the sale had been consummated. SPO1 Espenido and his two companions rushed towards the “civilian informant” and the appellant and arrested the latter after apprising him of his constitutional rights. SPO1 Espenido recovered the ₱100.00 marked money from the appellant while the plastic pack was given by the “civilian informant” to SPO1 Espenido.

The appellant was taken to the police station for investigation. The ₱100.00 marked money and the plastic pack containing the suspected *shabu* were turned over to SPO2 Nuñez who marked the plastic pack with “FA” the initials of herein appellant. He then prepared a letter requesting for examination⁹ of the item seized from the appellant addressed to the PNP Crime Laboratory. PCI Salinas, a forensic chemist of the PNP Crime Laboratory of Brgy. Apas, Cebu City, testified that he conducted a laboratory examination of the recovered specimen¹⁰ that yielded “positive result for the presence of methylamphetamine hydrochloride, a dangerous drug.”¹¹

The appellant denied that he was a *shabu*-seller; he also denied that he was arrested in a buy-bust operation. He claimed that on that evening of November 4, 2005 he was eating bread when SPO2 Nuñez barged inside his house, handcuffed him and brought him to the police precinct. He claimed that he was mistaken for his neighbor “Narding” the real *shabu*-seller. His daughter, Maria Theresa, corroborated him.

Ruling of the Regional Trial Court

The RTC found appellant guilty as charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

From this judgment, appellant appealed to the CA.

Ruling of the Court of Appeals

On appeal, the CA upheld the RTC ruling. The appellate court held that the non-submission of the pre-operation report to the PDEA did not at all render the buy-bust operation irregular. What it held as important is that the police officers were able to call the PDEA prior to the operation. The CA was convinced that all

⁹ Exhibit “C.”

¹⁰ Exhibit “D.”

¹¹ Exhibit “E.”

the elements of the offense charged were established by the prosecution. The CA held that the integrity and evidentiary value of the confiscated item had been preserved, despite the fact that the police officers did not strictly adhere to the procedure outlined in Section 21 of RA 9165 which governs the so-called “buy-bust” operations. It held that the police officers regularly performed their functions. Thus, in its Decision of May 31, 2010, the CA decreed dispositively –

WHEREFORE, premises considered, the Appeal is hereby DISMISSED. The Decision dated February 28, 2007 of the Regional Trial Court (RTC), Branch 58, Cebu City, in Criminal Case No. CBU-75283, is AFFIRMED.

SO ORDERED.¹²

Aggrieved, appellant is now before us seeking the reversal of his conviction faulting the courts below for convicting him of the crime charged. He questions in his Supplemental Brief: (1) the lack of pre-coordination with the PDEA regarding the buy-bust operation, (2) the non-presentation in court of the unnamed “civilian informant” as poseur-buyer, (3) the non-compliance by the police officers with the prescribed procedure under Section 21, Article II of RA 9165 and lastly, the dubious chain of custody of the subject *shabu*.

The Office of the Solicitor General (OSG) prays for the affirmance of the appealed Decision arguing that the essential elements of the offense charged had been adequately established and that the appellant’s bare denial cannot prevail over the positive and straightforward testimonies of the police operatives who are presumed to have performed their duties regularly.

Our Ruling

The appeal is well-taken.

Prefatorily, we stress again that generally, the trial court’s findings of fact, especially when affirmed by the CA, are entitled to great weight, and will not be disturbed on appeal.¹³ Even as this Court must defer to this salutary rule, it must likewise pay homage to a higher duty which is to dispense real, conscientious and honest-to-goodness justice by conducting a thorough examination of the entire records of the case based on the settled principle that an appeal in a criminal case opens the whole case for review on all questions including those not raised by the parties.¹⁴

The appellant contends that the belated submission of the pre-operation report to the PDEA after the buy-bust operation violates RA 9165; and that the

¹² CA rollo, p. 89.

¹³ *People v. Pepino-Consulta*, G.R. No. 191071, August 28, 2013, 704 SCRA 276, 294 citing *People v. Kamad*, 624 Phil. 289 (2010).

¹⁴ See *People v. Dulay*, G.R. No. 193854, September 24, 2012, 681 SCRA 638, 646.

non-presentation of the unnamed “civilian informant” who allegedly brokered the transaction with him casts serious doubts on the factuality of the buy-bust operation.¹⁵

There is no merit in this contention.

We held in *People v. Abedin*¹⁶ that coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation; that in fact, even the absence of coordination with the PDEA will not invalidate a buy-bust operation.¹⁷ Neither is the presentation of the informant indispensable to the success in prosecuting drug-related cases.¹⁸ Informers are almost always never presented in court because of the need to preserve their invaluable service to the police. Unless their testimony is absolutely essential to the conviction of the accused, their testimony may be dispensed with since their narrations would be merely corroborative to the testimonies of the buy-bust team.

Adherence to the chain of custody rule not established.

In this ultimate recourse, appellant focuses his principal argument on the alleged failure of the prosecution to establish a continuous and unbroken chain of custody of the seized illegal drug and the lack of integrity of the evidence in view of the police officers’ non-compliance with Section 21, Article II of RA 9165.

“In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.”¹⁹ The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence beyond reasonable doubt plus the fact of its delivery and/or sale are both vital and essential to a judgment of conviction in a criminal case.²⁰ And more than just the fact of sale, “[o]f prime importance therefore x x x is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.”²¹

The Dangerous Drugs Board Regulation No. 1, Series of 2002, defines chain of custody as “duly recorded authorized movements and custody of seized

¹⁵ *People v. Arriola*, G.R. No. 187736, February 8, 2012, 665 SCRA 581, 602 citing *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359.

¹⁶ G.R. No. 179936, April 12, 2012, 669 SCRA 322, 337-338.

¹⁷ *People v. Arriola*, supra at 602-603, citing *People v. Roa*, supra.

¹⁸ *People v. Monceda*, G.R. No. 176269, November 13, 2013, 709 SCRA 355, 370.

¹⁹ *People v. Kamad*, supra note 13 at 300.

²⁰ *People v. Obmiranis*, 594 Phil. 561, 569 (2008).

²¹ *Catuiran v. People*, 605 Phil. 646, 655 (2009).

drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction.”

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include 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.

While the testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard obtains in case the evidence is susceptible of alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit’s level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain or custody rule.²²

Measured by the foregoing yardstick, we find that the prosecution utterly failed to establish convincingly the chain of custody of the alleged seized plastic pack subject matter hereof. In fact only PO2 Enriquez and SPO1 Cañete testified in respect to the identity of the alleged evidence. However, from their testimonies, the prosecution was not able to account for the linkages in the chain while the plastic pack was not or no longer in their respective possession.

While both witnesses testified that after the sale and apprehension of the appellant, the poseur-buyer turned over the subject pack of *shabu* to their team leader SPO1 Espenido, there is no record as to what happened after the turn-over. SPO1 Espenido to whom the specimen was allegedly surrendered by the poseur-buyer was not presented in court to identify the person to whom it was given thereafter and the condition thereof while it was in his possession and control. The prosecution did not bother to offer any explanation for his non-presentation as a witness. This is a significant gap in the chain of custody of the illegal stuff.

The prosecution’s cause is also marred by confusion and uncertainty regarding the possessor of the pack of *shabu* when it was brought to the police station. By PO2 Enriquez’s account, it was SPO2 Nuñez who was in possession

²² *Mallillin v. People*, 576 Phil. 576, 587-588 (2008), citing *United States v. Howard-Arias*, 679 F.2d 363, 366.

of the same – an account which is at loggerheads with the claim of SPO1 Cañete that he was in custody and possession thereof and that he personally brought the same to the police station. These police officers cannot seem to agree on a point over which there could hardly be a disagreement. It must be observed that SPO2 Nuñez who had supposedly taken custody of the substance following PO2 Enriquez’s account was likewise not presented in court to testify. Worse, the prosecution did not even try to reconcile this inconsistency. Moreover, the prosecution failed to show how, when and from whom SPO2 Nuñez or SPO1 Cañete received the evidence. There was no evidence on how they came into possession of the pack of *shabu*. Again, this is a clear missing link in the chain of custody of the specimen after it left the hands of SPO1 Espenido.

We also take note that the testimonies of the prosecution witnesses failed to identify the person to whom the specimen was given at the police station. All that has been said is that the investigator, SPO2 Nuñez, marked the specimen. But this statement did not necessarily mean that he was the same officer who received the same from either PO2 Enriquez or SPO1 Cañete. In fact, there is a total want of evidence tending to prove that fact. It must be recalled that SPO2 Nuñez did not take the witness stand to identify the specific marking on the alleged specimen; neither did the prosecution adduce conclusive proof as to the author of the handwriting affixed therein and admit the same as his own handwriting.

True, PO2 Enriquez claimed that he personally delivered to the crime laboratory the specimen attached to the letter-request; nonetheless, he did not categorically testify that the substance presented in court was the very same substance delivered to the crime laboratory for analysis. In fact, going by the records neither of the two police officers testified that the substance delivered to the crime laboratory for chemical analysis and later presented in court was the same substance seized from the appellant.

Nor can the prosecution gain from the testimony of the forensic chemist PCI Salinas. The records show that there is nothing positive and convincingly clear from the testimony of PCI Salinas. She did not at all categorically and straightforwardly assert that the alleged chemical substance that was submitted for laboratory examination and thereafter presented in court was the very same substance allegedly recovered from the appellant. If anything, the sum and substance of her testimony is that the alleged pack of *shabu* submitted to her for laboratory examination showed that it was positive for methamphetamine hydrochloride or *shabu*. She never testified where the substance came from. Her testimony was limited only on the result of the examination she conducted and not on the source of the substance.

“[W]hile the chain of custody should ideally be perfect [and unbroken], in reality it is not, ‘as it is almost always impossible to obtain an unbroken chain.’”²³ As such, what is of utmost importance “is the preservation of the integrity and the

²³ *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 368.

evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.”²⁴ In the case at bench, this Court finds it exceedingly difficult to believe that the integrity and evidentiary value of the drug have been properly preserved by the apprehending officers. The inexplicable failure of the police officers to testify as to what they did with the alleged drug while in their respective possession resulted in a breach or break in the chain of custody of the drug. In some cases,²⁵ the Court declared that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of the *shabu* plus the irregular manner which plagued the handling of the evidence before the same was offered in court, whittles down the chances of the government to obtain a successful prosecution in a drug-related case.

Here, apart from the utter failure of the prosecution to establish an unbroken chain of custody, yet another procedural lapse casts further uncertainty about the identity and integrity of the subject *shabu*. We refer to the non-compliance by the buy-bust team with the most rudimentary procedural safeguards relative to the custody and disposition of the seized item under Section 21(1),²⁶ Article II of RA 9165. Here, the alleged apprehending team after the alleged initial custody and control of the drug, and after immediately seizing and confiscating the same, never ever made a physical inventory of the same, nor did it ever photograph the same in the presence of the appellant from whom the alleged item was confiscated. There was no physical inventory and photograph of the item allegedly seized from appellant. Neither was there any explanation offered for such failure.

While this Court in certain cases has tempered the mandate of strict compliance with the requisite under Section 21 of RA 9165, such liberality, as stated in the Implementing Rules and Regulations²⁷ can be applied only when the

²⁴ Id.

²⁵ *Mallillin v. People*, supra note 22; *People v. Obminaris*, supra note 20; *People v. Garcia*, 599 Phil. 416 (2009) and *Cariño v. People*, 600 Phil. 433 (2009).

²⁶ 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 drug 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.

²⁷ 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 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

evidentiary value and integrity of the illegal drug are properly preserved as we stressed in *People v. Guru*.²⁸ In the case at bar, the evidentiary value and integrity of the alleged illegal drug had been thoroughly compromised. Serious uncertainty is generated on the identity of the item in view of the broken linkages in the chain of custody. In this light, the presumption of regularity in the performance of official duty accorded the buy-bust team by the courts below cannot arise.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00688 dated May 31, 2010 is **REVERSED** and **SET ASIDE**. Appellant Fernando Ranche Havana a.k.a. Fernando Ranche Abana is hereby **ACQUITTED** of the charge, his guilt not having been established beyond reasonable doubt.

The Director of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** the accused from custody, unless he is held for another lawful cause.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

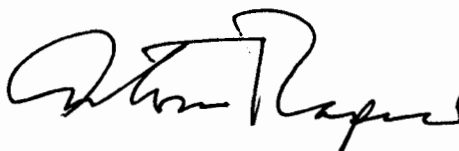

MARVIC M.V.F. LEONEN
Associate Justice

preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

²⁸ G.R. No. 189808, October 24, 2012, 684 SCRA 544, 558.

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*

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

