



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 240749
PHILIPPINES,
Plaintiff-Appellee,

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, JJ.

GIOVANNI DE LUMEN y
LADLAGARAN and MAURA
ARANZASO y MENDOZA,
Accused,

GIOVANNI DE LUMEN y
LADLAGARAN,
Accused-Appellant.

Promulgated:

11 DEC 2019

X-----X

RESOLUTION

INTING, J.:

This appeal seeks to set aside the Decision¹ dated September 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08754 which affirmed the Decision² dated March 23, 2015 of Branch 23, Regional Trial Court (RTC), Trece Martires City, Cavite finding Giovanni de Lumen (appellant) guilty of violating Section 12, Article II of Republic Act No. (RA) 9165.

¹ Rollo, pp. 3-13; penned by Associate Justice Manuel M. Barrios with Associate Justices Sesinando E. Villon and Renato C. Francisco, concurring.
² CA rollo, pp. 58-64; penned by Executive Judge Aurelio G. Icasiano, Jr.

The Antecedents

In Criminal Case No. TMCR-350-09, appellant and co-accused Arcangel Lapiz (Arcangel) were charged with violation of Section 12, Article II of RA 9165 or Illegal Possession of Drug Paraphernalia in an Information³ that reads:

That on or about the 11th day of September 2009 in the Municipality of Gen. Trias, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, conspiring, confederating and mutually aiding each other did then and there, willfully, unlawfully and feloniously have in their possession, control and custody one (1) strip of aluminum foil, two (2) pcs. disposable lighter, four (4) pcs. Aluminum tooter, and three (3) transparent plastic sachets consider under Section 12, R.A. 9165 as an equipment, instrument, apparatus or paraphernalia fit or intended for smoking, consuming or introducing dangerous drugs into the body, in violation of the said provisions of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

CONTRARY TO LAW.⁴

Meanwhile, co-accused Maura Aranzaso (Maura) was charged with violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs in Criminal Case No. TMCR-352-09. The accusatory portion of the Information⁵ reads:

That on or about the 11th day of September 2009 in the Municipality of Gen. Trias, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver and distribute to a poseur-buyer one (1) sealed transparent plastic sachet containing zero point zero three (0.03) grams of Methamphetamine Hydrochloride, commonly known as "shabu," a dangerous drug, in violation of the provisions of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

CONTRARY TO LAW.⁶

³ Records, p. 1.

⁴ *Id.*

⁵ *Id.* at 16.

⁶ *Id.*

Version of the Prosecution

On September 11, 2009, Police Officer II Victor O. Tampis (PO2 Tampis) conducted a buy-bust operation in the house of Maura in Marycris Complex Brgy. Pasong Camachile 2, General Trias, Cavite following the numerous complaints they received about the illegal activities of Maura. According to PO2 Tampis, a text message from a concerned citizen was reported to the Mayor's office about the illegal trade of Maura. Thereafter, the Municipal Police station of General Trias, Cavite received a document from the Mayor's office indicating therein the persons selling *shabu*, and Maura was listed on top of the watch list.⁷

In preparation, PO2 Tampis, the designated *poseur*-buyer, placed his initials "VOT" on the three pieces of ₱100-bill as buy-bust money. PO2 Lord Allan Poniente (PO2 Poniente), PO1 Amor Estrada (PO1 Estrada), and Senior Police Officer III Jose Mendoza Eusebio (SPO3 Eusebio), among others, served as the back-up officers.

At the entrance of Maura's house, the confidential informant introduced PO2 Tampis to Maura as a "scorer" of *shabu*. PO2 Tampis bought one plastic sachet of suspected *shabu* from Maura and handed the marked money to her. The sale having been consummated, PO2 Tampis introduced himself as a police officer, arrested Maura, and retrieved the marked money from the latter. When a commotion ensued, PO2 Poniente and PO1 Estrada immediately rushed to the scene where they saw the appellant and Arcangel sniffing *shabu* inside Maura's residence. They arrested them and recovered the following drug paraphernalia: one strip of aluminum foil with traces of white crystalline substance; two disposable lighters; four pieces aluminum tooter (rolled aluminum foil) with traces of white crystalline substance; and three transparent plastic sachets with traces of white crystalline substance.⁸

After the conduct of the inventory, the seized items were submitted to the crime laboratory for examination. The buy-bust item confiscated from Maura, as well as the drug paraphernalia recovered in the possession of the appellant and Arcangel, tested positive for methamphetamine hydrochloride.⁹

⁷ CA rollo, p. 105.

⁸ *Id.* at 106-107.

⁹ Records, pp. 13 and 14.



Version of the Defense

In defense, appellant denied the charge. He claimed that on the date and time in question, he was at the house of Maura to get a water container. He was about to leave when several persons entered the house and arrested him along with Arcangel and a certain Elaine. Thereafter, he was brought to the police station of General Trias in Cavite where he was charged with possession of illegal drugs and illegal drug paraphernalia.¹⁰

Co-accused Maura corroborated the appellant's testimony. She alleged that between 10:00 p.m. and 11:00 p.m., she was in her residence when five persons arrived. Three of them entered her house and made a search. After which, they tied their hands with wire and forced them to board a vehicle. Later, they were brought to Imus and were subjected to a drug test before going to the Bacao police station. She also denied the charges against her.¹¹

In its Decision¹² dated March 23, 2015, the RTC found Maura and appellant guilty as charged. Thus:

WHEREFORE, finding the guilt of the accused Giovanni de Lumen and Maura Aranzaso beyond reasonable doubt, Giovanni de Lumen is hereby meted the penalty of imprisonment from six (6) months and one (1) day to four (4) years and a fine of ten thousand (P10,000.00) Pesos for Violation of Sec. 12, Art. II, R.A. 9165. While Maura Aranzaso is meted the penalty of *Reclusion perpetua* from twenty (20) years and one (1) day to forty (40) years of imprisonment and to pay a fine of seven hundred thousand pesos (P700,000.00) only.

The other accused Arcangel Lapiz died during the trial of this case.

SO ORDERED.¹³

The RTC found that all the elements of illegal sale of drugs has been established in this case, to wit: (1) Maura sold drugs to PO2 Tampis, the *poseur*-buyer; (2) the sachet of drug and the marked money

¹⁰ CA rollo, pp. 36-37.

¹¹ *Id.* at 62.

¹² *Id.* at 58-64.

¹³ *Id.* at 63-64.

have been positively identified by PO2 Tampis; (3) prior to the buy-bust operation, there was a coordination made by the police with the Philippine Drug Enforcement Agency; and (4) after the arrest of all the accused, an inventory of the seized items was conducted. With respect to appellant, it noted that he was caught red-handed possessing and using illegal drug and paraphernalia. The RTC refused to give credence to his alibi and instead took into consideration of the fact that the appellant was using drugs at the time of his arrest and tested positive for drug use.¹⁴

Both Maura and appellant filed a notice of appeal¹⁵ from the trial court's Decision.

In a Decision¹⁶ dated September 29, 2017, the CA upheld the conviction of the appellant, but acquitted his co-accused Maura on the ground of reasonable doubt. The dispositive portion of the CA's decision reads:

WHEREFORE, the foregoing considered, the appeal is PARTLY GRANTED. The consolidated Decision dated 23 March 2015 of the Regional Trial Court (Branch 23, Trece Martires City, Cavite) in Criminal Case Nos. TMCR-350-09 and TMCR-352-09 is: (1) AFFIRMED with respect to accused-appellant Giovanni de Lumen; and, (2) REVERSED and SET ASIDE insofar as accused-appellant Maura Aranzaso y Mendoza is concerned and, who, by virtue of this verdict, is ACQUITTED on reasonable doubt. Accordingly, the Director of the Correctional Institution for Women in Mandaluyong City is directed to cause the immediate release of accused-appellant Aranzaso, unless the latter is being lawfully held for another cause, and to inform this Court of the date of her release or reason for her continued confinement, as the case may be, within five (5) days from notice. The seized drug paraphernalia are confiscated and ordered destroyed in accordance with law.

SO ORDERED.¹⁷

¹⁴ *Id.* at 63.

¹⁵ Records, pp. 174 and 175.

¹⁶ *Rollo*, pp. 3-13.

¹⁷ *Id.* at 12-13.

Appellant moved for a partial reconsideration¹⁸ of the Decision, but the CA denied it in a Resolution¹⁹ dated February 14, 2018. The CA declared:

Accused-appellant De Lumen, thus, filed the instant Motion for Partial Reconsideration wherein he reiterated his arguments that there exists a serious doubt as to the identity of the *corpus delicti* as the chain of custody was not properly followed and that his arrest was illegal as he was not the subject of the buy-bust operation.

Notably, these matters have already been adequately considered and discussed in Our [D]ecision. The pieces of evidence consistently show that accused-appellant De Lumen was caught *in flagrante delicto* using prohibited drugs and was in possession of illegal drug paraphernalia. It was also established that PO1 Estrada confiscated the said paraphernalia, placed markings thereon, and made an inventory of the seized items. Thereafter, the paraphernalia were sent to the PNP Crime Laboratory for forensic examination. With these proven facts, accused-appellant De Lumen's guilt has been established beyond reasonable doubt.

WHEREFORE, the foregoing considered, the Motion for Partial Reconsideration is DENIED.

SO ORDERED.²⁰

Hence, this appeal.²¹

In a Resolution²² dated September 17, 2018, this Court required the parties to submit their respective supplemental briefs, if they so desire. The Office of the Solicitor General, in its Manifestation In Lieu of Supplemental Brief²³ dated January 10, 2019, informed the Court that it elects to dispense with the filing of a supplemental brief considering that all relevant issues/arguments in the case have been adequately adduced in its Brief for the Appellee dated July 3, 2017. Similarly, in his Manifestation In Lieu of Supplemental Brief²⁴ dated January 18, 2019, appellant opted not to file a supplemental brief since he had exhaustively

¹⁸ CA *rollo*, pp. 175-189.

¹⁹ *Id.* at 209-210.

²⁰ *Id.*

²¹ *Id.* at 211-213.

²² *Rollo*, pp. 20-21.

²³ *Id.* at 22-24.

²⁴ *Id.* at 26-28.

discussed the assigned errors in the Brief for the Accused-Appellant's²⁵ dated March 3, 2017.

The Court now resolves whether the guilt of appellant was proven beyond reasonable doubt. Central to this issue is the determination of whether the integrity and evidentiary value of the evidence were duly preserved.

Principally, the chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence. To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what it claims it to be. Simply put, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be. In the prosecution of illegal drugs, in particular, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.²⁶

Here, what is involved are disposable and fungible objects such as aluminum foil, lighters, and aluminum tooters which are highly susceptible to substitution and alteration. Given the nature of these items, stricter compliance with the rule on the chain of custody is expected. Unfortunately, the present case failed to pass this scrutiny.

The elements that must be established to sustain convictions for illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.²⁷

²⁵ CA rollo, pp. 29-56.

²⁶ *People v. Lim*, G.R. No. 231989, September 4, 2018.

²⁷ *People v. Obias, Jr.*, G.R. No. 222187, March 25, 2019 citing *Zalameda v. People*, 614 Phil. 710, 727 (2009).

Section 21, Article II of RA 9165, as amended by RA 10640, provides for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

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 person/s 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.*

(2) *Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;*

(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 final certification shall be issued immediately upon completion of the said examination and certification; x x x x (Emphasis and italics supplied.)

While RA 9165 has been amended by RA 10640 which modified Section 21(1), among others, to require the presence of an elected public official and representative of the Department of Justice (DOJ) or the media during the physical inventory and photographing of the seized drugs, the original text of the law applies in this case since the incident occurred prior to the date of effectivity²⁸ of RA 10640. Under the original provision of Section 21, the apprehending team shall, after seizure and confiscation, immediately conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, (a) a representative from the media and (b) the DOJ, and (c) any elected public official who shall be required to sign the copies of the same, and the seized items must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.²⁹

To further ensure the integrity of the seized items, the prosecution must account for the following 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 from the forensic chemist to the court.³⁰

Strict compliance with the requirements set forth under Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations of the law provides that noncompliance with the requirements of Section 12, under justifiable grounds, will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. Accordingly, the prosecution must satisfactorily prove that: (a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In one case, the Court emphasized that for

²⁸ Republic Act No. 10640 took effect on August 7, 2014.

²⁹ *People v. Wisco*, G.R. No. 237977, August 19, 2019.

³⁰ *People v. Lacdan*, G.R. No. 232161, August 14, 2019, citing *People v. Gayoso*, 808 Phil. 19, 31 (2017).

the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Furthermore, the justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.³¹

The extant case is tainted with grave violations of Section 21.

One. The records show that not all of the witnesses required under Section 21(1) were present during the physical inventory and photographing of the seized drug and drug paraphernalia. Noticeably, the only person who arrived and witnessed the “preparation of the inventory” and signed the Receipt of the Property Seized³² was *Barangay* Captain Lamberto Carampot. Evidently, the DOJ representative and the media representative were not around.

While the absence of the required witnesses does not *per se* render the confiscated items inadmissible, their presence and the immediate marking and conduct of the physical inventory after seizure and confiscation in full view of the accused and the required witnesses cannot be brushed aside as a simple procedural technicality. The prosecution must adduce a justifiable reason for the omission or a showing of any genuine and sufficient effort to secure the required witness. It could have alleged and proved any of the following justifiable reasons: “(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photographing of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of [the required witnesses under Section 21(1) of RA 9165] within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.”³³

³¹ *People v. Gabunada*, G.R. No. 242827, September 9, 2019 citing *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³² Records, p. 8.

³³ *People v. Wisco*, *supra* note 29 citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

Unfortunately, the prosecution did not bother to explain, much less allege, the absence of representatives from the DOJ and the media during the physical inventory and the taking of photographs of the seized items. For failure of the prosecution to provide justifiable grounds or to show that it exerted genuine efforts in securing the witnesses required under the law, the Court is constrained to rule that the integrity and evidentiary value of the seized items have been compromised.³⁴

Two. None of the witnesses testified to whom the seized items were turned over at the police station. The prosecution only averred that the police operatives brought all the accused and the confiscated items to the police station in General Trias for inquest and preparation of the necessary documents. It was not clear, however, whether the illicit drugs and paraphernalia were turned over to the investigating officer at all, if there were any.

Three. The prosecution likewise failed to present PO2 Poniente, the police officer who supposedly delivered the Request for Laboratory Examination³⁵ and the items to the laboratory. He could have narrated how he handled the items in his custody prior to turning them over to the crime laboratory at around 1:10 p.m. of September 11, 2009. The absence of testimony or stipulation as to how PO2 Poniente handled the illegal drugs and paraphernalia obviously resulted in a gap in the chain of custody.

Four. No testimonial or documentary evidence was given whatsoever as to how the items were kept while in the custody of the forensic chemist until it was transferred to the court. As in the other links, it was not shown how the forensic chemist, Oliver B. Dechitan, handled and stored the seized items before the same were retrieved for presentation in court. Neither was there any stipulation that the evidence custodian preserved the integrity and evidentiary value of such items.

In sum, the events of September 11, 2009 should be taken and appreciated as a whole even as they gave rise to two criminal cases against appellant and his co-accused Maura. The reasons for acquitting Maura for selling drugs like the prosecution's complete failure to introduce the drugs she allegedly sold to PO2 Tampis and the police operative's own admission that he failed to ask Maura to sign the inventory, seriously cast doubt, not only to her own guilt, but more so on

³⁴ *Id.*

³⁵ Records, p. 9.

the soundness and reliability of the measures taken or the procedures followed by the buy-bust team. These circumstances cast a heavy shadow on the integrity of the operation and the police operatives themselves. In the appellant's case, there was no showing that a proper inventory and taking of pictures of the drug paraphernalia were undertaken by the police operatives. PO1 Estrada simply testified that they confiscated the drug paraphernalia from him and Arcangel and then brought them to the Scene of the Crime Operatives for laboratory test. Yet, there is no evidence as to how the illegal articles were stored or preserved, how they were delivered to the laboratory, and who actually received them. Worse, the prosecution failed to prove how such items reached the court. The Court is thus left with absolutely no guarantee of the integrity of the sachets containing illegal drugs other than the self-serving assurances of the police operatives. This is precisely the situation that the Comprehensive Dangerous Drugs Act seeks to prevent. The very process that Section 21 requires is plain, standardized, and even run-of-the-mill, guarantee that the integrity of the seized drugs and/or drug paraphernalia is preserved. All that law enforcers have to do is follow the law.³⁶

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08754 with respect to accused-appellant Giovanni de Lumen y Ladlagaran is **REVERSED** and **SET ASIDE**. Accused-appellant Giovanni de Lumen y Ladlagaran is **ACQUITTED** of violation of Section 12, Article II of Republic Act No. 9165, and the bail bond posted for his provisional liberty is ordered cancelled.


Let entry of judgment immediately issue.

SO ORDERED.

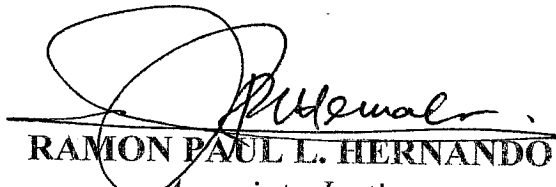

HENRI JEAN PAUL B. INTING
Associate Justice

³⁶ *People v. Que*, G.R. No. 212994, January 31, 2018.

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



ANDRES B. RYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

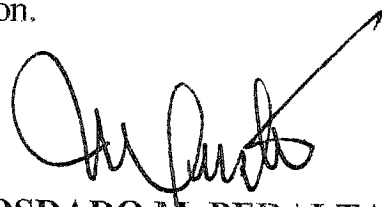
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior 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 Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

A handwritten signature in black ink, appearing to read 'Diosdado M. Peralta', with a long, sweeping flourish extending upwards and to the right.

DIOSDADO M. PERALTA
Chief Justice