



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **14 October 2020** which reads as follows:*

“G.R. No. 247820 (*People of the Philippines v. Mike Kennon Pasiona y Lamagna a.k.a. “Bote/Bhotlog”*). – This is an appeal of the Decision<sup>1</sup> dated November 9, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 09881, which affirmed with modification the Consolidated Decision<sup>2</sup> dated September 8, 2017 of the Regional Trial Court (RTC) of Marikina City, Branch 193, which found herein accused-appellant Mike Kennon Pasiona y Lamagna a.k.a. “Bote/Bhotlog” (accused-appellant) guilty of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

**The Facts**

Accused-appellant was charged with violation of Sections 5 and 11, Article II of RA 9165. The accusatory portion of the two (2) Informations read as follows:

In Criminal Case No. 2017-5759-D-MK:

That on or about the 15<sup>th</sup> day of May 2017, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and knowingly sell to PO1 Joseph E. Capones, a poseur buyer, one (1) heat-sealed transparent plastic sachet containing 0.12 Gram (subsequently marked as “MKP-BB 5/15/17”) of white crystalline substance which gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

<sup>1</sup> Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Ricardo R. Rosario and Ma. Luisa C. Quijano-Padilla, concurring; *rollo*, pp. 3-19.

<sup>2</sup> Rendered by Presiding Judge Alice C. Gutierrez; *CA rollo*, pp. 44-55.

CONTRARY TO LAW.<sup>3</sup>

In Criminal Case No. 2017-5760-D-MK:

That on or about the 15<sup>th</sup> day of May 2017, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control three (3) heat-sealed transparent plastic sachets each containing white crystalline substance, respectively weighed and subsequently marked as follows:

MKP-1 5/15/17	0.10 gram
MKP-2 5/15/17	0.12 gram
MKP-3 5/15/17	0.12 gram

which gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>4</sup>

Upon arraignment, accused-appellant pleaded not guilty to the offenses charged.<sup>5</sup> After the Pre-trial conference, trial on the merits ensued.

*Version of the Prosecution*

On May 15, 2017, at around 8 o'clock in the morning, a Confidential Informant (CI) reported to the Police Station about the sale of drugs by accused-appellant inside his house, which is located at No. 27 Spring St., Summer Homes, *Barangay* Concepcion Uno, Marikina City. Police Chief Inspector (PCI) Glenn N. Aculana ordered Police Officer 1 Joseph E. Capones (PO1 Capones) to verify the reported activity. PO1 Capones and the CI went to the house of accused-appellant. When the CI introduced PO1 Capones as a scorer or buyer of *shabu*, accused-appellant told them that his supply will arrive in the afternoon.

A buy-bust team was then organized, comprised of the following: PO1 Capones, as the *poseur*-buyer; PO1 Mark Joseph Cruz (PO1 Cruz), as the designated back up; Senior Police Officer 4 Elmer C. Riganan (SPO4 Riganan), as the team leader, and five (5) other police officers.

At about 4:40 in the afternoon of the same day, the buy-bust team proceeded to the target place. PO1 Capones and the CI went ahead to the house of accused-appellant, while the rest of the buy-bust team waited nearby for the pre-arranged signal.

<sup>3</sup> Records, p. 8.

<sup>4</sup> Id. at 10.

<sup>5</sup> Id. at 36.

At around 5:30 in the afternoon, the team arrived outside the house of accused-appellant and decided to wait since it was closed. However, the police officers saw that another male person knocked at the door and, when accused-appellant opened the door, he handed something to the person. Thus, SPO4 Rigonan ordered PO1 Capones and the CI to commence the transaction. PO1 Capones and the CI introduced themselves as the person who came earlier. PO1 Capones spoke to accused-appellant: "*Bote kami yung pinabalik mo kanina may basura ka na ba?*" Which the latter replied: "*Oo pare magkano iiskorin nyo?*" PO1 Capones responded: "*Three hundred lang Bote, yung panalo ha.*" PO1 Capones handed over the money to accused-appellant. Accused-appellant went inside the house and came back carrying a pink coin purse from which he took out a plastic sachet containing suspected *shabu*. PO1 Capones had difficulty in executing the pre-arranged signal, so PO1 Cruz took the initiative to rush towards the house of accused-appellant and introduced himself as a police officer. Thereafter, the police officers went inside accused-appellant's house. PO1 Capones confiscated the pink coin purse from accused-appellant's right hand (containing three [3] more sachets of *shabu*) and read his constitutional rights and the law he violated.<sup>6</sup>

The seized plastic sachets were marked, photographed, and inventoried inside the house of accused-appellant in the presence of the following witnesses: *Barangay Kagawad* Wilfredo Santos and media representative Cesar Barquilla of *Remate*. Thereafter, accused-appellant was brought to the Police Station for booking and for the preparation of the Chain of Custody Form. The police officers then indorsed accused-appellant and the seized items to the Eastern Police District for drug testing of accused-appellant and the laboratory examination of the seized items suspected as *shabu*. PCI Margarita M. Libres (PCI Libres) prepared the chemistry report, which showed that the recovered specimens were positive for methamphetamine hydrochloride or *shabu*.

#### *Version of the Defense*

Accused-appellant, on the other hand, insisted on his innocence and denied that his nickname is Bote or Bhotlog. He claimed that he was just outside his house when a group of men approached him and asked him: "*sumama ka sa akin [B]ote, ituro mo yong bahay mo, ilabas mo yong basura mo*" to which, he answered: "*wala po ako ng hinahanap nyo.*"<sup>7</sup>

He then brought the police officers to his house. When they did not recover anything from his house, they forced him to name persons who are selling drugs, which he vehemently denied. The police officers then placed him inside the car and while they were driving around the vicinity, he was asked again to name persons he knew who are selling drugs. He was

<sup>6</sup> Id. at 15-16 (*Sinumpaang Salaysay* of PO1 Joseph E. Capones).

<sup>7</sup> TSN, July 25, 2017, p. 3.

brought back to his house where the police officers told him that since he is unable to name persons who are selling drugs, he will be the one charged. The police officers uttered: "*paano yan wala kang naituro, ikaw ang taya, ngayon kakasuhan ka namin ng 5, 11.*" The police officers then prepared a *Salaysay*, took pictures and called the *barangay*. After the *Barangay* Captain signed the document, accused-appellant was brought to the Criminal Investigation Department (CID).<sup>8</sup>

### **The Ruling of the RTC**

In its Consolidated Decision, the RTC held that the prosecution was able to establish the elements of illegal sale and illegal possession of dangerous drugs. There was sufficient evidence to prove that accused-appellant engaged in the illicit trade of selling prohibited drugs and, during the conduct of the buy-bust operation, he had in his possession some illegal drugs. The RTC likewise opined that the police officers complied with Section 21 of RA 9165 and that the integrity and evidentiary value of the seized items were properly preserved.

The *fallo* of the RTC Decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 2017-5759-D-MK, accused MIKE KENNON PASIONA y Lamagna a.k.a BOTE/BHOTLOG is hereby found GUILTY for Violation of Section 5, Article II of RA 9165. He is sentenced to suffer the penalty of life imprisonment and the payment of a fine in the amount of five hundred thousand (Php500,000.00) pesos.

In Criminal Case No. 2017-5760-D-MK, accused MIKE KENNON PASIONA y Lamagna a.k.a BOTE/BHOTLOG, is hereby found GUILTY for violation of Section 11, Article II of RA 9165. He is sentenced to suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine of Three Hundred Fifty Thousand (Php350,000.00).

The sachets of methamphetamine hydrochloride (shabu) confiscated from accused MIKE KENNON PASIONA y Lamagna a.k.a. BOTE/BHOTLOG are forfeited in favor of the government and ordered disposed of in accordance with law.

SO ORDERED.<sup>9</sup>

### **The Ruling of the CA**

On appeal before the CA, accused-appellant assailed the Consolidated Decision of the RTC and insisted on the non-existence of the buy-bust

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<sup>8</sup> Id. at 4-5.

<sup>9</sup> CA *rollo*, p. 55.

operation. Also, accused-appellant alleged that the prosecution failed to prove with certainty the *corpora delicti* of the offenses considering that the chain of custody of the seized items were not complied with: (1) the marking of the seized item from the alleged buy-bust operation was not done immediately upon confiscation; (2) there was no testimony on who received the sachets of *shabu* at the forensic laboratory; (3) the stipulated testimony of PCI Libres is incomplete as she merely confirmed that she examined and confirmed that the contents of the sachets are positive for *shabu*; (4) there was failure to give details on how the seized drugs came to the hands of the prosecutor, when PO1 Capones identified the same in court.

The CA denied the appeal and upheld the conviction of accused-appellant. The CA further held that the defense of frame-up on the part of accused-appellant has no evidentiary basis and that the chain of custody rule was adequately complied with. The marking inside the house of accused-appellant cannot be considered an irregularity and the prosecution reasonably justified that the marking and inventory were done inside the house to keep the operation safe and away from the crowd of spectators gathering outside the house. As regards the third and fourth link of the chain of custody, the CA held that the parties' stipulations that the specimen which PCI Libres examined and confirmed to be positive for *shabu* are the same ones that were submitted and identified before the trial court.

The dispositive portion of the now assailed CA Decision reads as follows:

WHEREFORE, the appeal is DISMISSED. The Consolidated Decision dated September 8, 2017 of the Regional Trial Court of Marikina City, Branch 193, in Criminal Case Nos. 2017-5759-D-MK and [2017]-5760-D-MK convicting accused-appellant Mike Kennon Pasiona y Lamagna a.k.a. BOTE/BHOTLOG for violation of Sections 5 and 11, respectively, of Article II, R.A. No. 9165, is hereby AFFIRMED with the MODIFICATION that, for Criminal Case No. 2017-5759-D-MK, he shall not be eligible for parole.

SO ORDERED.<sup>10</sup>

Aggrieved, accused-appellant appealed the case before the Court praying for his acquittal.

### The Issues

1. Was the accused-appellant's defense of being "framed-up" meritorious?
2. Was the chain of custody unbroken?

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<sup>10</sup> *Rollo*, p. 18.

### The Court's Ruling

On the first issue, the defense of denial or frame-up interposed by accused-appellant cannot be given scant consideration considering that his allegation was unsupported and unsubstantiated with clear and convincing evidence. As a rule, bare-naked allegations are considered self-serving as they are easily concocted and, thus, cannot be given probative weight.

Now to the second issue: *Was the chain of custody unbroken?*

In the prosecution of illegal sale and illegal possession of dangerous drugs, the *corpus delicti* must be proven beyond reasonable doubt. The dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, the identity of the dangerous drugs must be established with moral certainty. In order to remove any unnecessary doubt as to the identity of the seized dangerous drugs, the prosecution must be able to prove that the illegal drug seized from the suspect/s is the very same substance offered in court as exhibit.<sup>11</sup> This is in essence, the chain of custody rule.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, defines the chain of custody as follows:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized 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. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

It is settled that no chain of custody is perfect or unbroken. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.<sup>12</sup> The chain of custody rule is imposed in order to remove the doubts anent the identity of seized illegal drugs through the monitoring or tracking of the movements of the seized drugs.<sup>13</sup> Simply put, the main purpose of the observance of the chain of custody is to preserve the integrity of the evidence used in drugs cases.

In *People v. Mallillin*,<sup>14</sup> the importance of the chain of custody rule is explained as follows:

<sup>11</sup> *People v. Ladip*, 729 Phil. 495, 515 (2014).

<sup>12</sup> *Palo v. People*, 780 Phil. 681, 694-695 (2016).

<sup>13</sup> See *People v. Garcia*, 599 Phil. 416, 434 (2009).

<sup>14</sup> 576 Phil. 576, 587 (2008).

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 into 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. (Emphasis and underscoring supplied)

As a general rule, the following links must be established in the chain of custody of the seized item/s:

*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.

A judicious review of the records of this case reveals that the final link is breached.

The *fourth and final link* pertains to the turnover and submission of the marked illegal drugs from the forensic chemist to the court. The prosecution must be able to establish the safety precautionary measures made by the forensic chemist from the time the seized items came into his or her possession until it was turned over to the court. Generally, the forensic chemist must be able to testify on the following matters: (a) when and from whom the dangerous drug was received; (b) what are the identifying labels or other things accompanying the seized drugs; (c) description of the specimen and the container it was in; and (d) the name and method of analysis used in determining the chemical composition of the subject drugs.<sup>15</sup>

In the present case, the parties agreed to dispense with the testimony of the forensic chemist. As borne by the records, the prosecution offered and the defense admitted that PCI Libres is an expert witness; that on May 15, 2017, she received the Request for Laboratory Examination and four (4)

<sup>15</sup> *People v. Omamos*, G.R. No. 223036, July 10, 2019.

pieces of heat-sealed transparent plastic sachets containing suspected *shabu*, with the following markings: “MKP-BB 5/15/17,” “MKP-1 5/15/17,” “MKP-2 5/15/17,” and “MKP-3 5/15/17;” that she conducted an examination of the specimen and the substance contained therein yielded positive results for methamphetamine hydrochloride; that the results were reduced into writing under Physical Science Report No. MCSO-D-009-17 dated May 15, 2017; that the said specimen were the same items turned over to her by PO1 Capones; and that she would be able to identify the specimen and that the same ones were submitted and identified in court.<sup>16</sup>

Accused-appellant argues that the prosecution cannot seek refuge behind the stipulation of facts as it did not complete the chain of custody.

The Court agrees with accused-appellant.

In *People v. Pajarin*,<sup>17</sup> the Court held that should the parties agree to dispense with the attendance and the testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he or she had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized illegal drugs. The following stipulations must be complied with:

- (a) that the forensic chemist received the seized article as marked, properly sealed, and intact;
- (b) that he or she resealed it after the examination of the content; and
- (c) that he or she placed his own marking on the same to ensure that it could not be tampered with during trial.

The second and third required stipulations are markedly wanting in this case.

The lack of stipulation or testimony regarding safety precautions made after the examination of the seized items by the forensic chemist leaves a considerable room for doubt of whether there is another person outside the chain of custody who could have had the opportunity to tamper with the seized drugs. The Court cannot stress enough the importance of establishing the precautions made by the forensic expert in ensuring the preservation of the integrity and evidentiary value of the seized items.

In *People v. Ubungen*,<sup>18</sup> the Court declared that absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.

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<sup>16</sup> Records, pp. 45-47.

<sup>17</sup> 654 Phil. 461, 466 (2011).

<sup>18</sup> G.R. No. 225497, July 23, 2018.



In *People v. Omamos*,<sup>19</sup> the failure of the parties to stipulate on how the forensic chemist handled the drugs from the time she received it until it got presented in court and the lack of description of the method she utilized in analyzing chemical composition of the drug sample cast serious doubt on the identity and integrity of the *corpus delicti*.

In *People v. Cabuhay*,<sup>20</sup> the parties merely stipulated that the forensic chemist is an expert witness and that she received the specimen in a sealed transparent plastic sachet and that it yielded positive results for methamphetamine hydrochloride or *shabu* after the laboratory examination thereon. The Court held that the failure to include in the stipulations the precautions taken by the forensic chemist after the conduct of the laboratory examination on the illegal drug, as well as the manner it was handled after it left her custody, render the stipulations in her testimony ineffective in completing an unbroken chain of custody.

In *People v. Kasan*,<sup>21</sup> the accused were acquitted on the ground that the parties' stipulations to dispense with the testimony of the forensic chemist did not contain the vital pieces of information as required in *People v. Cabuhay*,<sup>22</sup> *i.e.*, the forensic chemist received the seized drugs as marked, properly sealed, and intact; resealed the drug items after examination of the content; and placed his or her own marking on the drug items, leaving a huge gap in the chain of custody of the seized drugs.

Additionally, the fourth link is also broken by the prosecution's failure to show and establish who brought the seized drugs to the court. There was absence of testimony from any prosecution witness on how the seized drugs were taken from the custody of the forensic chemist or the evidence custodian and then submitted in evidence before the RTC. As held in *People v. Kasan*, the failure to show as to who brought the seized items before the trial court is considered a serious breach of the chain of custody rule.<sup>23</sup>

The improper and ineffective dispensation of the testimony of the forensic chemist and the lack of testimony on the turnover of the seized items from the forensic chemist to the court clearly show that the chain of custody is broken in this case.

Hence, the failure of the prosecution to prove the unbrokenness of the chain of custody of the seized illegal drugs, the integrity of the *corpus delicti* is tainted and the pieces of evidence for the State is rendered insufficient to prove the guilt of accused-appellant beyond reasonable doubt. Accordingly, the acquittal of accused-appellant is in order.

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<sup>19</sup> Supra note 15.

<sup>20</sup> G.R. No. 225590, July 23 2018.

<sup>21</sup> G.R. No. 238334, July 3, 2019.

<sup>22</sup> Supra note 20.

<sup>23</sup> Supra.

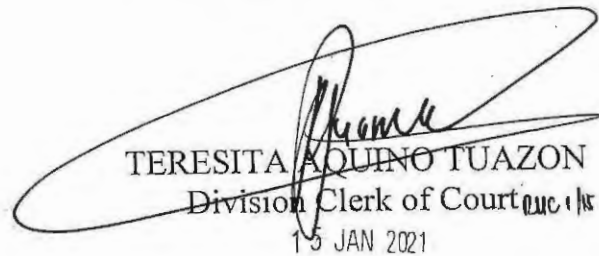
**WHEREFORE**, the appeal is **GRANTED**. The Decision dated November 9, 2018 of the Court of Appeals in CA-G.R. CR No. 09881 is **REVERSED** and **SET ASIDE**. For failure of the prosecution to prove the accused-appellant's guilt beyond reasonable doubt, the Court hereby rules that accused-appellant Mike Kennon Pasiona y Lamagna is **ACQUITTED** of the charge of violation of Sections 5 and 11, Article II of Republic Act No. 9165.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Mike Kennon Pasiona y Lamagna, unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

**SO ORDERED.**" (Baltazar-Padilla, J., on leave.)

By authority of the Court:

  
 TERESITA AQUINO TUAZON  
 Division Clerk of Court  
 15 JAN 2021

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 "BOTE/BHOTLOG" (x)  
 Accused-Appellant  
 c/o The Director  
 Bureau of Corrections  
 1770 Muntinlupa City

THE DIRECTOR (x)  
 Bureau of Corrections  
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 193  
 Marikina City  
 (Crim. Case Nos. 2017-5759-D-MK &  
 2017-5760-D-MK)

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