



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 189296**
Plaintiff-Appellee,

- versus -

Present:

RECTO ANGNAGAO y MAKAY
and ROBERT CARLIN y
PECDASEN,
Accused,

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

RECTO ANGNAGAO y MAKAY,
Accused-Appellant.

MAR 11 2015

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DECISION

BERSAMIN, J.:

The State bears the burden of establishing the chain of custody of the dangerous drugs confiscated during a buy-bust operation. The evidence of the chain of custody must meet the test of proof beyond reasonable doubt.

The Case

In its decision promulgated on November 28, 2008,¹ the Court of Appeals (CA) affirmed the conviction of Recto Angngao y Makay *aka* Amboy under the judgment rendered on December 14, 2006 by the Regional Trial Court, Branch 61 (RTC), in Baguio City for the illegal sale of 250 grams of marijuana resin or hashish (Criminal Case Nos. 22317-R), and for the illegal possession of 500 milliliters of hashish oil (Criminal Case Nos. 22318-R), and sentencing him in each case to life imprisonment and to pay a fine of ₱500,000.00.²

¹ *Rollo*, pp. 2-13; penned by Associate Justice Ricardo R. Rosario, with the concurrence of Associate Justice Rebecca De Guia-Salvador (retired) and Associate Justice Vicente S.E. Veloso (retired).

² *CA rollo*, pp. 16-27.

Hence, this appeal.

Antecedents

According to the CA, the established antecedent facts are as follows:

On 23 November 2003, SPO4 Marquez Madlon, member of the Philippine Drug Enforcement Agency in the Cordillera Autonomous Region (PDEA-CAR), received a call on his cellular phone from a caller who identified himself as Amboy. Amboy, who turned out to be appellant Recto Angngao y Makay, was asking for the whereabouts of a certain Jun Buguias, from whom he allegedly got SPO4 Madlon's number. Recalling that Buguias was one of those arrested by the PDEA-CAR for selling marijuana hashish, SPO4 Madlon took interest in the caller and made up a story by telling him that he was also waiting for Buguias to deliver to him his order of marijuana hashish. Believing SPO4 Madlon's story, appellant disclosed that he had marijuana resin which was supposed to be delivered to Buguias. Appellant likewise proposed that SPO4 Madlon should deal with him directly since Buguias is (sic) nowhere to be found. Appellant offered SPO4 Madlon to sell two hundred fifty (250) grams of marijuana resin for Fifty Thousand Pesos (₱50,000.00) and one (1) liter of marijuana hashish oil for One Hundred Fifty Thousand Pesos (₱150,000.00). He agreed to deliver them to SPO4 Madlon on the same day, between 7:30 and 8:30 in the evening at the Petron Gasoline Station in Baguio General Hospital along Marcos Highway.

Forthwith, SPO4 Madlon reported his conversation with appellant to his superior, Police Supt. Danilo Flordeliza, Regional Director of PDEA-CAR.

Acting on SPO4 Madlon's report, P/Supt Flordeliza conducted a briefing for a buy-bust operation. A buy-bust team was thereafter formed with Police Senior Inspector Edgar Apalla as the team leader, SPO4 Arthur Lucas as the back-up guard, SPO2 Cabili Agbayani as the seizing officer, Police Officer Akia as the arresting officer and SPO4 Madlon as the *poseur buyer*. The group brought with them the buy-bust money consisting of ten (10) Five Hundred (₱500.00) peso bills, amounting to Five thousand Pesos (₱5,000.00), mixed with one (1) bundle of boodle money.

Around 7:15 in the evening, SPO4 Madlon proceeded to the target area on board a rented Tamaraw FX Taxi, while the rest of the police operatives used another vehicle. Upon arriving at the Petron Gasoline Station, SPO4 Madlon called up appellant and informed him that he was already at the area waiting for him.

After waiting for a while, SPO4 Madlon noticed a tamaraw FX Taxi at the vicinity of the gasoline station. A man with a backpack alighted from the vehicle. He was with another man and he seemed to be looking for somebody. To make sure that it was appellant, SPO4 Madlon dialed appellant's cellphone number. The man, who turned out to be appellant, answered the call. SPO4 Madlon therefore instructed him to meet him at the Pancake House located within the vicinity of the Petron gasoline Station.

SPO4 Madlon sat and waited outside the Pancake House. Thereafter, appellant arrived and introduced his companion, who was later identified as appellant's co-accused Robert Carlin y Pecdasen. Carlin sat beside SPO4 Madlon while appellant took a seat opposite SPO4 Madlon. SPO4 Madlon then inquired about their transaction and asked appellant if he could get a discount on the price of the marijuana resin. Appellant refused. SPO4 Madlon then told appellant that he wanted to inspect the marijuana resin and check if it was of good quality. Appellant was at first hesitant but later on prevailed upon to bring out a brick of marijuana resin from his backpack. He showed it to SPO4 Madlon, who after confirming that it was indeed marijuana resin, took out the buy-bust money and gave it to Carlin. Carlin, who, all the while was merely observing the transaction, handed over the money to appellant. Thereafter, SPO4 Madlon stood up, as a pre-arranged signal to the police operatives that the transaction had been completed.

The back-up police officers, who were strategically positioned from a seeing distance, rushed to the aid of SPO4 Madlon and arrested appellant and Carlin. Upon frisking appellant, the police operatives recovered from him the buy-bust money and a bottle of dark-green viscous liquid suspected to be marijuana hashish oil. The confiscated items were marked with the initials "MKM" representing the initials of SPO4 Marquez Kilit Madlon, "CJA" for SPO2 Cabili Julian Agbayani, "AAL" for SPO4 Arthur Apil Lucas and "DEA" for Police Officer Daniel Esteban Akia.³

The confiscated substances, when brought to the Benguet Provincial Crime Laboratory Office in Baguio City for processing and identification, tested positive for *marijuana*, a dangerous drug. The brick of *marijuana* resin weighed 251.02 grams, while the bottle containing the dark green glutinous substance contained 450 milliliters of *marijuana* hashish oil.⁴

The Office of the City Prosecutor of Baguio City filed in the RTC two informations against Angngao and Robert Carlin y Pecdasen, charging them with the illegal sale of *marijuana* resin and illegal possession of *marijuana* hashish oil in violation of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

During the trial, Angngao denied the accusations, clarifying that he had been working as a construction worker in Quirino Hill, Baguio City at the time, and that on the day of the arrest, was visiting his cousin who had been confined at the Baguio City General Hospital; and that he was then suddenly accosted and arrested by police officers in the Pancake House near the hospital where he was having a snack.⁵

³ *Rollo*, pp. 4-7.

⁴ *Records*, p. 15.

⁵ *TSN*, March 9, 2006, pp. 4-16.

For his part, Carlin, also denying the charges, insisted that he did not know Angngao; that he was only accompanying a townmate who visited a friend confined at the Baguio City General Hospital; that after coming from the hospital, he and his friend had gone to the Pancake House to eat when a commotion occurred inside the restaurant caused by police officers arresting a customer, who turned out to be Angngao; and that the policemen then turned to him and arrested him allegedly for being the cohort of Angngao.⁶

Judgment of the RTC

On December 14, 2006,⁷ the RTC convicted Angngao but acquitted Carlin, *viz.*:

WHEREFORE, judgment is rendered in Criminal Case No. 22317-R finding the accused Recto Angngao y Makay **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer Life Imprisonment and to pay a fine of ₱500,000.00 and the costs, and Criminal Case No. 22318-R finding the accused Recto Angngao y Makay likewise **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer Life Imprisonment and to pay a fine of ₱500,000.00 and the costs.

The accused Roberty (sic) Carlin is **ACQUITTED** on grounds of reasonable doubt and is **ORDERED RELEASED** from custody unless otherwise being held lawfully for some other offense requiring continued detention.

SO ORDERED.⁸

Decision of the CA

On November 28, 2008,⁹ the CA promulgated its assailed judgment affirming the conviction of Angngao handed down by the RTC, to wit:

WHEREFORE, the Decision of the Regional Trial Court of Baguio City, Branch 61, dated 14 December 2006, in Criminal Cases Nos. 22317-R and 22318-R, is **AFFIRMED**.

SO ORDERED.

⁶ TSN, June 9, 2005, pp. 4-16.

⁷ CA *rollo*, pp. 16-27.

⁸ Id. at 27.

⁹ *Supra* note 1.

Issues

In this appeal, Angngao claims that the CA:¹⁰

I.

x x x GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

II

x x x GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTIONS'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED DRUGS.

In the appellee's brief filed in the CA, which the Office of the Solicitor General (OSG) adopted in this appeal, the State seeks the affirmance of the decision of the CA by insisting that the police officers who comprised the entrapment team were entitled to the presumption of the regularity of the performance of their official duty.

Ruling of the Court

The appeal is meritorious.

To ensure a conviction for the illegal sale of dangerous drugs, the following elements constituting the crime must be present, namely: (a) the identities of the buyer and seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. Such prosecution for the sale of illegal drugs requires more than the hasty presentation of evidence to prove each element of the crime. The presentation of the drugs as evidence in court is indispensable in every prosecution for the illegal sale of dangerous drugs because the drugs are the *corpus delicti* of the crime.¹¹ As such, the State should establish beyond doubt the identity of the dangerous drugs by showing that the dangerous drugs offered in court as evidence were the same substances bought during the buy-bust operation.¹² This requirement is complied with by ensuring that the custody of the seized drugs from the time of confiscation until presentation in court is safeguarded under what is referred to as the chain of

¹⁰ *Rollo*, p. 32.

¹¹ *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 287-288; *People v. Gutierrez*, G.R. No. 179213, September 3, 2009, 598 SCRA 92, 101.

¹² *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 317-318.

custody by Republic Act No. 9165, whose objective is to remove unnecessary doubts concerning the identity of the evidence.¹³

Should the State not definitively establish that the dangerous drugs presented in court were the very same substances actually recovered from the accused, the criminal prosecution for drug pushing should fail because the guilt of the accused was not established beyond reasonable doubt.¹⁴ According to *People v. Catalan*,¹⁵ the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 if the dangerous drugs are missing, or if 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. Indeed, the non-presentation of the dangerous drugs that constitute the *corpus delicti* would render the conviction unfounded.

As the means for the establishment of the chain of custody, Section 21 (1) of R.A. No. 9165 provides thus:

(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.

Complementing Section 21 (1) of R.A. No. 9165 is the following guideline under the Implementing Rules and Regulations (IRR) of R.A. No. 9165, to wit:

(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 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;

¹³ *Mallillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

¹⁴ See *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 317-318.

¹⁵ G.R. No. 189330, November 28, 2012, 686 SCRA 631, 642-643.

The manner and timing of the marking of the seized drugs or related items in accordance with the foregoing statutory rules are crucial in proving the chain of custody. The marking by the arresting officer of the drugs, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. This immediate marking is essential because the succeeding handlers of the drugs would use the markings as their reference to the seizure, and because it further serves to segregate the marked seized drugs from all other evidence from the time and point of seizure until the drugs are disposed of at the end of the criminal proceedings. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, “planting” or contamination of the evidence.¹⁶ Verily, the preservation of the chain of custody vis-à-vis the drugs ensures the integrity of the evidence incriminating the accused, and fulfills the element of relevancy as a requisite for the admissibility of the evidence.

The Court accepts that “while the chain of custody should ideally be perfect, in reality it is not, ‘as it is almost always impossible to obtain an unbroken chain.’”¹⁷ This limitation on the chain of custody is well recognized in Section 21 of R.A. No. 9165’s IRR, which states that non-compliance with the rules’ requirements under justifiable grounds shall not render void and invalid such seizures of and custody over said items as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team. In resolving drug-related offenses, therefore, the courts should deem to be essential “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.”¹⁸

The conviction would have been watertight. SPO4 Madlon, who acted as the poseur-buyer in the buy-bust operation, succeeded in purchasing from the appellant the brick of *marijuana* resin weighing 251.02 grams, more or less, for a total consideration of ₱50,000.00. The payment was received by the appellant through Carlin. The ensuing physical search conducted on the appellant further yielded the *marijuana* hash oil. The elements constituting the crime of illegal sale of dangerous drugs were seemingly established.

However, the conviction must have to be undone. The integrity of the evidence presented – the *corpus delicti* no less – became suspicious by the mysterious silence of the record on what transpired after the transaction. On its part, the RTC, after reliving the buy-bust operation, uncharacteristically jumped to the conclusion that the accused was guilty as charged by declaring

¹⁶ *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

¹⁷ *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 368.

¹⁸ *People v. Torres*, G.R. No. 191730, June 5, 2013, 697 SCRA 452, 466.

that “the prosecution was able to establish these elements [of illegal sale of dangerous drugs] beyond moral certainty,”¹⁹ and that the accused “was validly searched by the police officers after his lawful arrest and same yielded approximately one-half liter of the potent dangerous drug hash oil or resin.”²⁰ In the same breath, the RTC rejected the accused’s denial and alibi as inherently weak defenses.²¹ In turn, the CA devoted little, if any, discussion on the chain of custody vis-à-vis the seized drugs.

Such treatment by the two lower courts of a matter as essential to the conviction as the chain of custody is not surprising. An examination of the record indicates that no testimony on the links in the chain of custody from the time the drugs were confiscated up to the time they were offered as evidence in court was given by the arresting lawmen and the others who could have handled the drugs. This omission deprived the lower courts of the means of knowing the details as to every person who touched the drugs, as to how and from whom the drugs were received, as to where the drugs were at any given point in that interval, and as to what happened to the drugs while in the possession of each handler, including the relative condition in which the drugs were received and the state in which they were delivered to the next links in the chain. It is quite notable that the officers who served as the only witnesses to the buy-bust operation neither described the precautions taken to ensure that there had been no change in the condition of the drugs nor specified that there was no opportunity for any person not in the chain to have possession of the drugs.

To be more specific, the assailed decisions of both the RTC and the CA do not show that the arresting lawmen had marked the seized drugs immediately upon confiscation at the site of the arrest, or even later on in the police station. In fact, the RTC did not advert to any markings at all. Although the CA noted that the drugs were marked with the initials of the apprehending police officers, the circumstances attendant to such markings, like when and where the markings were done, were not sufficiently revealed. In particular, SPO4 Madlon, SPO4 Lucas and SPO2 Agbayani did not indicate whether the seized items had been marked right away following the confiscation, or later on in the police station, as the following excerpts of their testimonies show:

PROSECUTOR [CATRAL]

Q: As far as Amboy is concerned, what items were retrieved from him?

[SPO4 MADLON]

A: The marijuana hashish together with 1 liter marijuana hash oil, sir.

x x x x

¹⁹ CA *rollo*, p. 23.

²⁰ Id. at 27.

²¹ Id. at 20.

Q: So after you have already effected the arrest and the search was made in the persons of the accused, what happen (sic) next?

A: We prepared for physical examination request, for chemical analysis of the confiscated dangerous drugs from the suspect, request for drug test, the inventory of the evidences (sic) confiscated on the suspect and our Affidavit of Arrest, sir.²²

x x x x

Q: Actually who among you conducted the search in the person of the 2 accused?

[SPO4 LUCAS]

A: SPO2 Agbayani, sir.

x x x

Q: And after that what happen (sic) next?

A: We proceeded in our office, sir.

Q: And at your office what happen (sic)?

A: For documentation that's the time we were able to identify the suspect as Recto Angngao and Robert Carlin, sir.²³

x x x x

Q: There are markings here, CJA, what does that represent?

[SPO2 AGBAYANI]

A: My initials, Sir.

Q: Who placed that?

A: I was the one, Sir.

Q: How about this MKM?

A: Marquez K. Madlon, Sir.

Q: How about AEL?

A: Arthur E. Lucas, Sir.

Q: How about DEA?

A: Daniel E. Akia, Sir.

Q: How about this entry?

A: That is during the arrest of the suspect, Sir.²⁴

x x x x

Other than the response of SPO2 Agbayani to the question pertaining to the date appearing on the markings, nothing shows how such markings were obtained and the circumstances surrounding that important link in the chain. The members of the buy-bust team did not even mention in the Joint Affidavit of Arrest or in the Affidavit of Poseur-Buyer that they had marked the drugs.

The Prosecution cannot avoid confronting the issue of the broken chain of custody by embellishing its case with the presumption of regularity. This presumption, which is not conclusive, vanishes upon the slightest hint

²² TSN, July 28, 2004, pp. 19-20.

²³ TSN, September 29, 2004, pp. 23-25.

²⁴ TSN, November 22, 2004, pp. 11-12.

or taint of irregularity.²⁵ It stands only when nothing suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where, like here, the official act in question is irregular on its face, the presumption does not arise as a matter of course.²⁶ As such, the non-conformity with the requirements for preserving the chain of custody on the part of the arresting lawmen closed the door to the application of the presumption of regularity.

There were other indicia of non-conformity with the requirements. It is beyond dispute, for one, that no photograph was taken of the recovered items for documentation purposes. It was also not shown why, despite the requirement of the law itself, no representative from the media, from the Department of Justice, or any elective official was present to serve as a witness during the arrest. The Prosecution's testimonial evidence is actually bereft of the showing of the efforts undertaken by the law enforcers to see to the presence of any of such representatives during the operation against the appellant from his apprehension until the seizure of the drugs.

It is true that Section 21 of the IRR of R.A. No. 9165 only requires a substantial compliance with the requirements of markings and photographing instead of an absolute or literal compliance. Hence, an accused can still be held guilty provided that a justifiable ground for excusing the non-compliance with the requirements has been satisfactorily established by the Prosecution.²⁷

Such justifiable ground is wanting here. SPO4 Madlon and the rest of the buy-bust team tendered no explanation for the non-compliance. They were required to render sufficient reasons for their non-compliance during the trial; otherwise, the persons they charged would be acquitted on the ground of reasonable doubt.²⁸ Yet, they even seemed unaware that such requirements existed at all. We are aghast at their dismissive treatment of the requirements.

There is no question that the State had the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drugs. Without the explanation by the State, the evidence of the *corpus delicti* became unreliable, and the acquittal of the accused should follow on the ground that his guilt had not been shown beyond reasonable doubt.²⁹ Absent the justification by the arresting lawmen for their non-compliance with the requirement of an intact chain of custody, the trial court

²⁵ *People v. Abetong*, G.R. No. 209785, June 4, 2014, 725 SCRA 704, 317; *Cariño v. People*, G.R. No. 178757, March 13, 2009, 581 SCRA 388, 406.

²⁶ *People v. Abetong*, supra note 25, citing *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 251.

²⁷ *Id.*

²⁸ *People v. Mendoza*, G.R. No. 192432, June 23, 2014, 727 SCRA 113, 135.

²⁹ *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 136.

and the CA did not fairly convict the appellant in whose favor the safeguards have been erected by the law. As the Court well stated in *People v. Relato*:³⁰

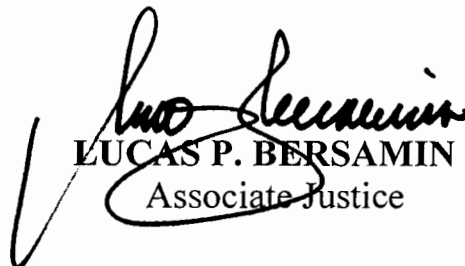
Statutory rules on preserving the chain of custody of confiscated prohibited drugs and related items are designed to ensure the integrity and reliability of the evidence to be presented against the accused. Their observance is the key to the successful prosecution of illegal possession or illegal sale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

Consequently, we reverse the conviction of the appellant for possession of or for the sale of illegal drugs under R.A. No. 9165 for failure to prove his guilt beyond reasonable doubt.

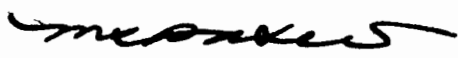
WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the November 28, 2008 decision of the Court of Appeals affirming the conviction of Recto Angngao y Makay by the Regional Trial Court, Branch 61, in Baguio City for the illegal sale of 250 grams of *marijuana* resin or hashish (Criminal Case Nos. 22317-R), and for the illegal possession of 500 milliliters of hashish oil (Criminal Case Nos. 22318-R); and **ACQUITS** him of the offenses charged based on reasonable doubt.

The Director of the Bureau of Prisons is **ORDERED** to **IMMEDIATELY RELEASE** Recto Angngao y Makay from custody upon receipt hereof, unless he is being held for some other lawful cause.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

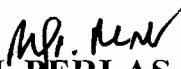
WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice

³⁰ G.R. No. 173794, January 18, 2012, 663 SCRA 260, 262.



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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