



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Appellee,

G.R. No. 206906

Present:

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

- versus -

Promulgated:
25 JUL 2016

FLORDILINA RAMOS,
 Appellant.

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DECISION

BRION, J.:

We resolve the appeal of accused-appellant Flordilina L. Ramos @ “Dinay” (*Ramos*) assailing the **February 2, 2011** and the **July 5, 2012** resolutions¹ of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00983. The *CA* dismissed Ramos’ appeal because she failed to timely file an appellant’s brief after she had appealed the RTC decision² finding her guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act (*RA*) No. 9165.³

THE CASE

In two (2) separate informations, the prosecutor charged Ramos for illegal sale and illegal possession of *shabu*. On arraignment, Ramos pleaded not guilty to both charges.

¹ *Rollo*, pp. 3-7; *CA rollo*, pp. 13-14, 60-62.

² *CA rollo*, pp. 36-39; RTC records, pp. 126-129.

³ Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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The evidence for the prosecution reveals that on June 22, 2005, at around 4:00 p.m., police operatives conducted a buy-bust operation against Ramos and another person named Carolina Porponio (*Porponio*). The police officers were inside a tinted vehicle parked about ten (10) meters away from where the confidential informant met with the subjects. From inside the car, they saw their informant hand the pre-marked ₱100.00 bill to Ramos who, in turn, gave one (1) transparent plastic sachet suspected to contain *shabu* from a Vicks Vaporub jar. When the transaction was completed, the police officers quickly alighted the vehicle and advanced to the place where the sale happened. They immediately arrested the subjects and, after frisking Ramos, they recovered the Vicks Vaporub jar which contained ten (10) more plastic sachets of *shabu*.

Ramos, on the other hand, gave a different version of what transpired. She claimed that in the afternoon of June 22, 2005, on the way home from fetching her daughter from school, she was suddenly arrested by four (4) policemen. Her wallet was taken from her after she was frisked. Thereafter, she was brought to the police station where she was charged for selling *shabu*.

Ramos also testified that she personally knew two (2) of her arresting officers as they were her neighbors. She said that she does not know why they would falsely accuse her of selling *shabu*. However, the trial court solicited from Ramos that she was living with her live-in partner and his father, who were both arrested for illegal drug transactions a few years earlier.

In its July 31, 2007 decision, the RTC found that the elements for illegal sale and possession were substantially proven by the prosecution. The trial court said that even though the poseur-buyer was not disclosed, the police actually saw how the drug sale transpired. It also held that the seized drugs from Ramos were the same drugs that were brought to the crime laboratory for examination and were properly marked, identified, presented, and admitted in evidence.

The RTC accordingly sentenced Ramos to suffer the penalty of life imprisonment for illegal sale of dangerous drugs, and imprisonment of twelve (12) years and one (1) day to fourteen (14) years for illegal possession. Ramos was likewise ordered to pay a fine of ₱500,000.00 and ₱200,000.00 for the respective offenses.

When the case was appealed, the CA dismissed it because Ramos' counsel failed to file her appellant's brief within the period required by law.

The Public Attorney's Office (*PAO*), acting as Ramos's counsel *de officio*, filed a motion for reconsideration and to admit the appellant's brief explaining that the notice from the CA was inadvertently sent to the handling lawyer when he had, at that time, already been relieved of his duties at the PAO Regional Special and Appealed Cases Unit. The handling

lawyer admitted that he was unable to track the progress of his cases since he assumed that the present case had already been assigned to another lawyer.

In the attached appellant's brief, Ramos argued that the non-presentation of the poseur-buyer is fatal to the prosecution's case as the identity of the buyer, which was not proven in this case, is one of the essential elements to prove in the illegal sale of dangerous drugs. Considering that Ramos denied outright the allegations and gave a totally different version of the events, it was incumbent upon the prosecution to rebut her allegations by presenting the alleged poseur-buyer. Having failed to do so, the presumption that evidence willfully suppressed would be adverse if produced, therefore, arises.

Moreover, Ramos contended that the police officers could not have seen the minuscule plastic sachet of *shabu* ten (10) meters away from where the alleged transaction had taken place, and taking into account that they were inside a tinted vehicle. Thus, any information that the police officers gathered from the poseur-buyer was indubitably hearsay because he never testified during trial.

With regard to the *corpus delicti*, Ramos pointed out the flaws in the post-seizure custody of the drugs allegedly recovered from her: (1) it was only at the police station – not at the place where the drugs were confiscated – where the police officers marked the confiscated items; and (2) there were no identifying marks placed on the seized drugs immediately after confiscation and prior to the turnover to the investigating officer.⁴

Without dwelling on the merits of Ramos's appeal, the CA denied the motion for reconsideration and affirmed the dismissal of her appeal. The appellate court noted that it took Ramos almost two (2) years before she actually filed her brief, and that the explanation given by the PAO lawyer was not persuasive enough to justify the belated filing of the appellant's brief.

Aggrieved, Ramos filed the present appeal before this Court.

OUR RULING

After carefully examining the records of this case, we find merit in **REVERSING** the resolutions of the CA as the evidence against Ramos is insufficient to sustain her conviction for both offenses; accordingly, Ramos should be **ACQUITTED** on grounds of reasonable doubt.

⁴ It must be noted that Ramos was arrested along with Carolina Porponio who is likewise suspected for selling *shabu*.

Failure to file an appellant's brief within the prescribed period is not fatal to the case of the accused if there are substantial considerations in giving due course to the appeal.

At the onset, our rules of procedure are more lenient to appellants who are represented by a counsel *de officio* when it comes to filing their briefs. The Rules of Court provides that the CA may dismiss the appeal if the appellant fails to file his brief within the period prescribed by the rules, **except where the appellant is represented by a counsel *de officio*.**⁵

In *De Guzman v. People*,⁶ we clarified that if the appellant is represented by a counsel *de parte* and he fails to file his brief on time, the appeal may be dismissed by the CA with notice to the appellant. However, the rule takes exception when the appellant is represented by a counsel *de officio*.⁷

In other words, when it comes to appellants represented by a counsel *de officio*, the appeal should not be dismissed outright as the rule on filing briefs on time – applied to appellants represented by a counsel *de parte* – is not automatically applied to them.

In the case at bar, the PAO received the notice to file brief that the CA sent to the PAO in Cebu City, on February 19, 2009. The notice contained an advisory that all the evidence was already attached to the record available to the appellant, and her counsel had thirty (30) days from receipt within which to file brief. The CA *rollo*, however, does not disclose that an appellant's brief was filed as of May 20, 2010.

If Ramos' appeal is denied due course, a person could be wrongfully imprisoned for life over a mere technicality. It is not contended that Ramos failed to perfect her appeal within the reglementary period; her counsel merely failed to file her appellant's brief within the period accorded to her.

We must remember that there is a distinction between the failure to file a notice of appeal within the reglementary period and the failure to file a brief within the period granted by the appellate court. The former results in the failure of the appellate court to acquire jurisdiction over the appealed decision resulting in its becoming final and executory upon failure of the appellant to move for reconsideration.⁸ The latter simply results in the abandonment of the appeal which can lead to its dismissal upon failure to

⁵ Rule 124, Section 8, par. 1.

⁶ 546 Phil. 654 (2007).

⁷ Id. at 659.

⁸ *Tamayo v. Court of Appeals*, 467 Phil. 603, 605, 608 (2004), citing *Development Bank of the Philippines v. Court of Appeals*, 411 Phil. 121 (2001). See also *Republic v. Imperial*, G.R. No. 130906, February 11, 1999, 303 SCRA 127-129; *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998, 296 SCRA 38; and *Carco Motor Sales, Inc. v. Court of Appeals*, G.R. No. L-44609, August 31, 1977, 78 SCRA 526.

move for its reconsideration.⁹ Considering that we suspend our own rules to exempt a particular case where the appellant failed to perfect its appeal within the reglementary period, we should grant more leeway to exempt a case from the stricture of procedural rules when the appellate court has already obtained jurisdiction.¹⁰

We concede that it is upon the sound discretion of the CA to consider an appeal despite the failure to file an appellant's brief on time. However, we are not unfamiliar with the time-honored doctrine that procedural rules take a step back when it would subvert or frustrate the attainment of justice, especially when the life and liberty of the accused is at stake. Based on this consideration, we can consider this case as an exception given that the evidence on record fails to show that Ramos is guilty beyond reasonable doubt.

For an accused to be convicted in illegal drug cases, the prosecution must establish all the elements of the offenses charged, as well as the corpus delicti or the dangerous drug itself.

In the illegal sale of dangerous drugs pursuant to a buy-bust operation, the details of the purported transaction must clearly and adequately show (1) the initial contact between the poseur-buyer and the pusher, (2) the offer to purchase, (3) the payment of consideration, and (4) the delivery of the illegal drug.¹¹ The manner by which all these transpired, whether or not through an informant, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully led to the commission of an offense.¹²

In the present case, it is undisputed that the police operatives had no direct participation in the transaction, it was only the confidential-informant who transacted with Ramos. Such fact was affirmed in the direct testimony of one of the police operatives:

Q: Who acted as your poseur-buyer in your buy-bust operation?

A: Our confidential poseur-buyer.

Q: You mean to say a civilian person?

A: Yes, sir.

Q: Was there police officer in your team who went with that civilian asset when the buy-bust operation was made?

A: Only the confidential agent approached.

Q: But my question is: Was there any police officer who went with him when he approached the suspect?

A: None.¹³

⁹ *Ibid.*

¹⁰ *Development Bank of the Philippines vs. Court of Appeals*, *supra* note 8, at 515.

¹¹ *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 698.

¹² *Id.* at 699.

¹³ TSN, April 21, 2005, pp. 4-5.

In convicting Ramos, the trial court said that although the name of the poseur-buyer was not disclosed, the police officers who were there saw the confidential-informant deliver the pre-marked ₱100.00 bill to Ramos, who then handed over one (1) plastic sachet of *shabu*.

We have previously ruled that failure to present the poseur-buyer is fatal to the prosecution's case under the following circumstances: (1) if there is no person other than the poseur-buyer who witnessed the drug transaction;¹⁴ (2) if there is no explanation for the non-appearance of the poseur-buyer and reliable eyewitnesses who could testify in his place;¹⁵ (3) if the witnesses other than the poseur-buyer did not hear the conversation between the pusher and poseur-buyer;¹⁶ and (4) if the accused vehemently denies selling any prohibited drugs coupled with the inconsistent testimonies of the arresting officers or coupled with the possibility that there exist reasons to believe that the arresting officers had motives to testify falsely against the appellant.¹⁷

The common circumstance in the foregoing cases is that the arresting officers had no personal knowledge of the fact that an illegal drug transaction transpired. In this case, none of the police operatives were actually present while the poseur-buyer was transacting with Ramos.

To be sure, the police officers had personal knowledge of what was going on because they saw everything while inside a tinted car ten (10) meters away, and that prior to the buy-bust operation, they had already planned what was going to happen.¹⁸ The prosecution, therefore, was still able to prove all the elements of the illegal sale even though the poseur-buyer did not testify on how he transacted with Ramos.

However, contrary to the findings of the lower courts, we find that the prosecution failed to properly prove the existence of the *corpus delicti* or the actual drugs confiscated from Ramos. After reviewing the records of the case, we find that the integrity and evidentiary value of the seized drugs were not preserved as the evidence on record manifests serious doubts in the handling of the confiscated items.

It is not uncommon to reverse a conviction simply because there are gaps in the chain of custody over the confiscated items. The presence of these gaps qualifies as reasonable doubt involving the most important element in drug-related cases – the existence of the dangerous drug itself.

¹⁴ *People v. Fider*, G.R. No. 105285, June 3, 1993, 223 SCRA 117.

¹⁵ *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 759-762.

¹⁶ *Samson*, G.R. No. 101333, March 2, 1993, 219 SCRA 364.

¹⁷ *People v. Lucero*, G.R. No. 84656, January 4, 1994, 229 SCRA 1; *People v. Sillo*, G.R. No. 91001, September 18, 1992, 214 SCRA 74.

¹⁸ See *Pestilos v. Generoso*, G.R. No. 182601, November 10, 2014, sc.judiciary.gov.ph, where we explained when a police officer may arrest the accused without a warrant based on the officer's own determination of probable cause from his appreciation of the facts and circumstances.

The procedure laid down in Section 21, Article II of R.A. No. 9165 was crafted by Congress as a safety precaution to address potential police abuses by narrowing the window of opportunity for tampering with evidence.¹⁹ Out of all the requirements laid down, the most important is the immediate marking and the physical inventory of the seized drugs, to *wit*:

(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 an elected public official who shall be required to sign the copies of the inventory and be given a copy thereof [.]²⁰

To comply with this provision and to establish the first link in the chain of custody, what is required is that the marking be made in the presence of the accused and upon immediate confiscation.²¹ Considering that immediate confiscation has no exact definition, we have held that marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.²²

After re-examining the records, we find that there is no evidence, testimonial or otherwise, on the exact details before the marking of the seized drugs. The evidence on record only show that the plastic sachet of *shabu* the confidential informant bought from Ramos and the other ten (10) plastic sachets inside the Vicks Vaporub jar recovered from her were surrendered to one SPO1 Roland Navales. The records of this case lack any evidence showing how the allegedly seized drugs were preserved by the confidential informant and by the arresting officers before the turnover at the police station.

Furthermore, we note that the police operatives conducted not only one buy-bust operation that day. The testimony of one of the arresting officers reveals that they saw the confidential informant negotiate two (2) transactions that day – one was with Ramos and the other was with Porponio. Thus, considering that the confiscated items were only marked at the police station and absent any evidence on how the confidential informant possessed the drugs before turning them over, we cannot be absolutely sure that what was marked as evidence against Ramos was not the plastic sachet the confidential informant also bought from Porponio.

As for the other ten (10) plastic sachets of *shabu* found inside the Vicks Vaporub jar recovered after Ramos' arrest, the trial court erred in relying on the presumption of regularity. Contrary to the trial court's findings, we find that there were allegations and evidence that should have

¹⁹ *People v. Ancheta*, G.R. No. 197371, June 13, 2012, sc.judiciary.gov.ph, citing *People v. Umpang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324.

²⁰ RA No. 9165, Article II, Section 21.

²¹ *People v. Ressureccion*, G.R. No. 186380, October 12, 2009, 603 SCRA 510.

²² *Ibid.*

led it to be careful in relying on this presumption. In fact, it was the trial court that solicited that Ramos was living with her live-in partner and his father before they were arrested. From this fact, it would not be implausible for the police officers to have the motive to implicate her in drug transactions. While it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do this within the bounds of the law.

More importantly, the presumption of regularity cannot prevail over the constitutional presumption of innocence and cannot, by itself, constitute proof of guilt beyond reasonable doubt.²³ The presumption of regularity is just a presumption disputable by contrary proof; when challenged by evidence, it cannot serve as binding proof.²⁴

Without the presumption of regularity, the testimonies of the police witnesses must stand on their own merits and the defense cannot be burdened with having to dispute these testimonies.²⁵ Here, the absence of any testimony or other evidence surrounding the handling of the ten (10) plastic sachets of *shabu* before they were turned over becomes fatal for the prosecution because we cannot be certain – without presuming regularity – that the drugs had not been tampered with by Ramos’s arresting officers.

In sum, the gaps in the prosecution’s evidence proving the identity and evidentiary value of the prohibited items allegedly seized do not establish proof beyond reasonable doubt that the drugs identified in court were the same items confiscated from Ramos.

WHEREFORE, we **REVERSE** and **SET ASIDE** the February 2, 2011 and the July 5, 2012 resolutions of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00983. Accused-appellant Flordilina L. Ramos @ “Dinay” is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered to be **IMMEDIATELY RELEASED** from detention unless she is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report the action she has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.



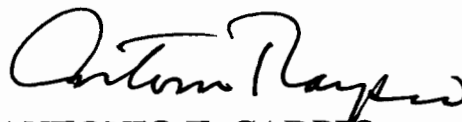
ARTURO D. BRION
Associate Justice

²³ *People v. Sabdula*, G.R. No. 184758, April 21, 2014, sc.judiciary.gov.ph, citing *People v. Cantalejo*, G.R. No. 182790, April 24, 2009, 586 SCRA 777, 788.

²⁴ *Ibid.*

²⁵ *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 221. See also *Dissenting Opinion* of J. Brion in *People v. Agulay*, 588 Phil. 247, 293-294 (2008).

WE CONCUR:



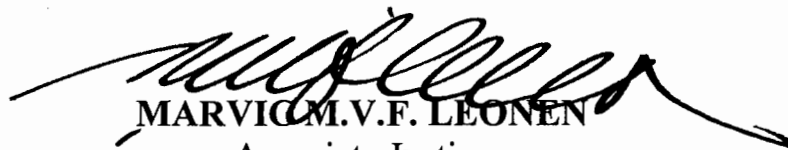
ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



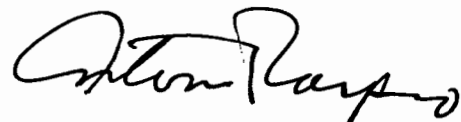
JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

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



ANTONIO T. CARPIO
Associate Justice
Chairperson

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