



CERTIFIED TRUE COPY
Wilfredo V. Lapid
 WILFREDO V. LAPID
 Division Clerk of Court
 Third Division

Republic of the Philippines
 Supreme Court
 Manila

OCT 29 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 221458

Present:

- versus -

PERALTA, J., Chairperson,
 LEONEN,
 REYES, JR., A.B.,*
 GESMUNDO, and
 REYES, JR., J.C., JJ.

MARCELO SANCHEZ y
 CALDERON,
 Accused-Appellant.

Promulgated:

September 5, 2018

Wilfredo V. Lapid

X ----- X

DECISION

GESMUNDO, J.:

This is an appeal from the October 16, 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR. H.C. No. 06003, which affirmed the January 30, 2013 Decision² of the Regional Trial Court of Quezon City, Branch 227 (RTC), in Criminal Case No. Q-06-144570, finding Marcelo Sanchez y Calderon (*appellant*) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

* Additional member per Special Order No. 2588 dated August 28, 2018.

¹ *Rollo*, pp. 2-12; penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Carmelita S. Manahan, concurring.

² *CA rollo*, pp. 54-62.

ML

Antecedents

In an Information³ filed before the RTC, appellant was charged with violation of Sec. 5, Art. II of R.A. No. 9165 as follows:

That on or about the 14th day of December, 2006, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver[,] transport or distribute any dangerous drug, did then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero (0.06) point zero six [gram] of white crystalline substance containing Methylamphetamine Hydrochloride also known as “SHABU”, a dangerous drug.

CONTRARY TO LAW.⁴

Appellant pleaded not guilty during the arraignment.

The prosecution presented as its witnesses PO1 Erwin Bautista (*PO1 Bautista*), Engr. Leonard M. Jabonillo (*Engr. Jabonillo*), PO1 Aldrin Ignacio (*PO1 Ignacio*) and PO1 Ronaldo Flores (*PO1 Flores*). On the other hand, appellant was the defense’s sole witness.⁵

Prosecution’s Version

On December 14, 2006 at around 4:30 o’clock in the afternoon, Police Inspector Alberto Gatus (*PI Gatus*) directly received an information from a male informant, who appeared at the Galas Police Station, that a certain “Kiting” was engaged in the illegal drug trade. Thereafter, PI Gatus assigned PO1 Bautista to coordinate with the Philippine Drug Enforcement Agency (*PDEA*) and to prepare the necessary documentation for the conduct of a buy-bust operation.

In the briefing for the buy-bust operation, PO1 Ignacio was designated as the poseur-buyer and PO1 Flores as his backup. PI Gatus also provided PO1 Ignacio with two (2) one hundred peso bills marked with initials “AI.”

At 7:00 o’clock in the evening of even date, the buy-bust team arrived at the place of operation. PO1 Ignacio and the informant alighted from the vehicle, and the latter pointed to a man whom he called “Kiting” standing in front of a house. They approached him and the informant introduced PO1 Ignacio. Kiting then asked PO1 Ignacio how much he would buy, to which

³ Records, p. 1.

⁴ Id.

⁵ *Rollo*, p. 3.

the latter replied “*Dalawang Piso*” (which meant ₱200.00 worth). PO1 Ignacio handed the buy-bust money to Kiting who, in turn, placed the money inside his right pocket and, thereafter, gave PO1 Ignacio the plastic sachet. PO1 Ignacio then lit a cigarette, the pre-arranged signal, prompting PO1 Flores to approach them. When PO1 Ignacio saw the other policemen closing in on them, he immediately grabbed Kiting while PO1 Flores recovered the buy-bust money from Kiting’s right side pocket. PO1 Ignacio showed the plastic sachet to PI Gatus and placed it inside another plastic sachet of suspected *shabu* and marked the same with his initials “AI.” After the arrest, the buy-bust team proceeded to take the pictures of Kiting and the plastic sachet of suspected *shabu*.

At the police station, investigator PO1 Bautista booked Kiting and asked the latter to identify himself to which he answered, “Marcelo Sanchez.” PO1 Bautista also received the buy-bust money and the plastic sachet of suspected *shabu* from PO1 Ignacio. He then prepared the inventory of the seized items and the requests for laboratory examination and drug dependency examination. He endorsed them to PO1 Ignacio, who brought the letter-requests and the specimen to the crime laboratory for examination. Engr. Jabonillo, a forensic chemical officer, received the letter-requests and the specimen.

In his Chemistry Report No. D-544-2006,⁶ Engr. Jabonillo reported that the specimen tested positive for methylamphetamine hydrochloride, a dangerous drug.

Defense’s Version

The appellant denied the charge that he was arrested in a legitimate buy-bust operation. He claimed that he was resting inside his house at around 5:00 o’clock in the afternoon of December 14, 2006 when the police officers suddenly barged into his house and searched for somebody. When the police officers did not find the person they were looking for, they arrested him instead. When they did not find anything, they got appellant’s cellphone and wallet which contained ₱200.00. Thereafter, appellant was brought to the police station where he was told that if he could bring out the person they were looking for, he would be released. Later on, he was referred for inquest proceedings and was informed that a charge for selling illegal drugs would be filed against him.

The RTC Ruling

On January 30, 2013, the RTC rendered the assailed judgment convicting the appellant of the crime charged, the dispositive portion reads:

⁶ Records, p. 13.

WHEREFORE IN THE LIGHT OF THE FOREGOING PREMISES, judgment is hereby rendered finding the accused MARCELO SANCHEZ Y CALDERON, guilty beyond reasonable doubt of the offense charged. He is ordered to suffer the penalty of life imprisonment and to pay a fine of [P]500,000.00.

The Branch Clerk of this Court is hereby ordered to forward the specimen subject of this case covered by **Final Chemistry Report No. D-544-2006** to the PDEA Crime Laboratory to be included in PDEA's next scheduled date of burning and destruction.

The Branch Clerk is likewise ordered to prepare the *[mittimus]* for the immediate transfer of the accused to the New Bilibid Prisons in Muntinlupa City.

SO ORDERED.⁷

The CA Ruling

Appellant appealed his conviction before the CA, arguing that the evidence against him was inadmissible because he was arrested without any warrant. He also questioned the buy-bust operation, citing the inconsistent testimonies of the prosecution witnesses.⁸

On the other hand, the appellee maintained that the prosecution had competently and convincingly established all the elements necessary for the charge of illegal sale of *shabu* through the positive and credible testimonies of the police officers pointing to appellant as the seller of the confiscated *shabu*.

The CA, however, affirmed appellant's conviction. It found no sufficient reason to depart or interfere with the findings of the court *a quo* on the credibility of witnesses. The prosecution had amply proven all the elements of the drug sale beyond moral certainty.⁹ The CA explained that:

In the instant case, the prosecution witnesses testified in a straightforward manner how they conducted the buy-bust operation that successfully led to the arrest of accused-appellant. Contrary to accused-appellant's assertion, there were no inconsistencies in the testimony of PO1 Ignacio because he candidly testified that after the arrest, he immediately marked the seized items at the place w[h]ere the arrest took place. In fact, the arresting officers took pictures of the accused-appellant together with the seized items at the place where the arrest was effected.

⁷ CA *rollo*, p. 62. (Emphasis supplied.)

⁸ *Rollo*, p. 7.

⁹ *Id.* at 9.

The testimonies of the prosecution witnesses clearly coincide with each other and clearly established how the buy-bust operation was conducted. It bears to stress that the inconsistencies being pointed out by the defense cannot overcome the positive and categorical testimonies of the prosecution witnesses that accused-appellant gave to PO1 Ignacio a plastic sachet containing *shabu* in exchange for the amount of [P]200.00 or two (2) one hundred peso bills.¹⁰

The CA also stressed that appellant's denial was not substantiated by clear and convincing evidence. There were no witnesses presented to substantiate his claim.¹¹

Ultimately, the CA was convinced that the prosecution was able to prove appellant's guilt beyond reasonable doubt.

Hence, the present appeal.

ISSUE

WHETHER OR NOT THE GUILT OF THE ACCUSED FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution¹² dated November 21, 2016, the Court required the parties to submit their respective supplemental brief, if they so desired. In his Manifestation in Lieu of a Supplemental Brief¹³ dated April 7, 2017, appellant manifested that he was adopting his Appellant's Brief filed before the CA as his supplemental brief for the same had squarely and sufficiently refuted all arguments raised by the appellee. In its Manifestation¹⁴ dated April 24, 2017, the Office of the Solicitor General (*OSG*), likewise, manifested that it would no longer file a supplement to its Appellee's Brief dated May 6, 2014.

The Court's Ruling

The appeal is meritorious.

To secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, the prosecution must establish the following

¹⁰ Id.

¹¹ Id. at 10.

¹² Id. at 18-19.

¹³ Id. at 25-27.

¹⁴ Id. at 32-33.

elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the appellant.¹⁵

In this case, the identities of the buyer and the seller were duly established. The marked buy-bust money retrieved from the appellant during the entrapment operation was likewise identified. The prosecution witnesses had shown that appellant handed over the illegal drugs to PO1 Ignacio, who, in turn, gave the marked buy-bust money, thus, completing the drug deal.

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."¹⁶

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,¹⁷ which implements R.A. No. 9165, defines chain of custody as follows:

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.

The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the appellant until the time it is offered in court as evidence. The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point.¹⁸

¹⁵ *People v. Ismael*, G.R. No. 208093, February 20, 2017.

¹⁶ *Id.*

¹⁷ Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

¹⁸ *People v. Bartolini*, 791 Phil. 626, 634 (2016).

To prove the required chain of custody, records show the following: 1) a buy-bust operation involving one “Kiting” took place in the evening of December 14, 2006;¹⁹ 2) the marked buy-bust money was retrieved from the appellant, who gave the sachet of *shabu* to PO1 Ignacio;²⁰ 3) the marking of the seized item was made after, and at the place of, arrest;²¹ 4) the taking of photos of the accused and the seized items were done at the place of arrest;²² 5) the investigation thereafter took place at the police station;²³ 6) the inventory and signing thereof by a *barangay kagawad* was made at the police station, in the presence of the accused, the operatives and other police officers;²⁴ 7) the specimen was brought by PO1 Ignacio to the crime laboratory for examination;²⁵ 8) the specimen was received by the forensic chemical officer;²⁶ and 9) the chemistry report showed that the specimen yielded positive for methylamphetamine hydrochloride.²⁷

On the basis thereof, the RTC concluded that:

In this case, the prosecution was able to establish that the sale – the delivery of the buy-bust money and in exchange, the delivery of the subject specimen, actually took place which consummated the transaction. The “*corpus delicti*” or the illegal drug was identified by all those who handled it to prove that its integrity was preserved.²⁸

The CA affirmed the RTC and wrote as follows:

Furthermore, the integrity and evidentiary value of the seized items were duly preserved because after the arrest, the seized items were immediately marked and photograph[ed]. Later on, it was inventoried and same items were turned over to the crime laboratory for examination. The seized items were the same items presented in court. Thus, the unbroken chain of custody has been duly established by the prosecution.²⁹

After an assiduous examination of the records, however, the Court is not convinced that the identity of the *corpus delicti* was properly established. There is reasonable doubt as to the alleged unbroken chain of custody.

¹⁹ Records, p. 6.

²⁰ Id.

²¹ Id. at 96-97.

²² Id. at 118-119.

²³ Id. at 122-123.

²⁴ Id. at 178-180, 219-221.

²⁵ Id. at 49-50.

²⁶ Id. at 72-73.

²⁷ Id. at 69.

²⁸ Id. at 275.

²⁹ *Rollo*, pp. 10-11.

In the Joint Affidavit of Arrest³⁰ executed by affiants PO1 Ignacio and PO1 Flores, they claimed that the specimen was marked with “AI-MS.” Similarly, the Inventory of the Seized Items,³¹ Initial Laboratory Report,³² Request for Laboratory Examination,³³ and Chemistry Report No. D-544-2006,³⁴ all showed that the specimen had the markings “AI-MS” on it. PO1 Bautista also testified during his direct examination that the sachet of *shabu* was marked with “AI-MS.” Particularly, his testimony reveals:

FISCAL BACOLOR:	And can you identify the plastic sachet turned over to you by the apprehending officers?
WITNESS:	Yes, sir.
FISCAL BACOLOR:	How can you identify?
WITNESS:	If I can see the markings of the arresting officers, sir.
FISCAL BACOLOR:	And what is the marking?
WITNESS:	It was “AI” stands for [Aldrin] Ignacio; “AI-MS”, MS stands for Marcelo Sanchez. ³⁵

Interestingly, however, PO1 Ignacio – the poseur-buyer and apprehending officer who marked the sachet of *shabu* – testified that he marked the specimen with his initials “AI” which means Aldrin Ignacio. The testimony was as follows:

FISCAL BACOLOR:	And, how about you, what did you do with the item handed to you by alias Kiting, Mr. Witness?
WITNESS:	I showed it to my chief and then I placed it inside a plastic sachet.
FISCAL BACOLOR:	After showing it to your chief and placing it in a plastic sachet, Mr. Witness, what did you do next with the item, if any?
WITNESS:	I marked it with my initials, sir.
FISCAL BACOLOR:	Mr. Witness, if shown to you, [would] you be able to identify this plastic sachet you recovered from alias [K]iting?
WITNESS:	If I see it, I can recognize it, sir.

XXXX

³⁰ Records, pp. 7-8.

³¹ Id. at 12.

³² Id. at 13.

³³ Id. at 14.

³⁴ Id. at 69.

³⁵ Id. at 77; TSN, April 28, 2008, p. 3.

FISCAL BACOLOR: Why are you sure that this is the one you recovered from alias Kiting, Mr. Witness?
WITNESS: Because I was the one who placed the markings, sir.

FISCAL BACOLOR: What was that markings, Mr. Witness?
WITNESS: "AI" means Aldrin Ignacio, sir.

FISCAL BACOLOR: Will you please point to us that markings, Mr. Witness?
WITNESS: "Ito po."

BRANCH CLERK: Witness pointing to the initials "AI."³⁶

Nowhere in the testimony, either during the direct or cross-examination, of PO1 Ignacio did he ever mention marking the specimen with "AI-MS." Nothing in the records would show that the prosecution attempted to reconcile the seeming discrepancy between PO1 Ignacio's testimony and the specimen submitted to the crime laboratory for examination relating to the alleged markings made by PO1 Ignacio. In fact, the prosecution merely brushed it aside and considered the same as trivial and inconsequential because it was not even raised during the trial.³⁷

The Court cannot, however, treat the matter lightly because the identity and integrity of the *corpus delicti* becomes uncertain. There is now doubt whether the sachet marked with "AI," as testified to by the very witness who placed the said marking, was the same sachet marked with "AI-MS" which was brought to the crime laboratory and ultimately presented in court.

There are four (4) links in the chain of custody, to wit: 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.³⁸

The first link is crucial in proving the chain of custody. It is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. The value of marking of the evidence is to

³⁶ Id. at 95-97; TSN, July 25, 2008, pp. 11-13.

³⁷ CA rollo, pp. 85-86.

³⁸ *People v. Gayoso*, G.R. No. 206590, March 27, 2017, citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

separate the marked evidence from the *corpus* of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, “planting” or contamination of evidence.³⁹ Thus, even if, as in this case, the seized item was immediately marked and the succeeding links have been established, the chain of custody is still deemed broken when reasonable doubt exist concerning the very marking placed on the specimen which could have successfully established the identity of the *corpus delicti*.

In *People v. Garcia*,⁴⁰ a similar observation was arrived at by the Court relating to inconsistencies in the markings between a testimony *vis-à-vis* documents presented in court, to wit:

We further note, on the matter of identifying the seized items, that the lower courts overlooked the glaring inconsistency between PO1 Garcia’s testimony *vis-à-vis* the entries in the Memorandum dated February 28, 2003 (the request for laboratory examination of the seized items) and the Physical Science Report No. D-250-03 dated February 28, 2003 issued by the PNP Crime Laboratory with respect to the marking on the seized items.

PO1 Garcia testified that he had marked the seized item (on the wrapper) with the initial “**RP-1**.” However, an examination of the two documents showed a different marking: on one hand, what was submitted to the PNP Crime Laboratory consisted of a single piece telephone directory paper containing suspected dried marijuana leaves fruiting tops with the marking “**RGR-1**” and thirteen pieces of rolling paper with the markings “**RGR-RP1**” to “**RGR-RP13**”; on the other hand, the PNP Crime Laboratory examined the following items with the corresponding markings: a printed paper with the marking “**RGR-1**” together with one small brick of dried suspected marijuana fruiting tops and thirteen pieces of small white paper with the markings “**RGP-RP1**” to “**RGP-RP13**.”

PO1 Garcia’s testimony is the only testimonial evidence on record relating to the handling and marking of the seized items since the testimony of the forensic chemist in the case had been dispensed with by agreement between the prosecution and the defense. Unfortunately, PO1 Garcia was not asked to explain the discrepancy in the markings. Neither can the stipulated testimony of the forensic chemist now shed light on this point, as the records available to us do not disclose the exact details of the parties’ stipulations.

To our mind, the procedural lapses in the handling and identification of the seized items, as well as the unexplained discrepancy in their markings, collectively raise doubts on whether the items presented in court were the exact same items that were taken from Ruiz when he was arrested. These constitute major lapses

³⁹ *People v. Enriquez*, 718 Phil 352, 367 (2013); citing *People v. Zakaria, et al.*, 699 Phil. 367 (2012).

⁴⁰ 599 Phil. 416 (2009).

that, standing unexplained, are fatal to the prosecution's case.⁴¹
(citations omitted, emphasis supplied)

To reiterate, unexplained discrepancy in the markings of the seized dangerous drug, resulting in the uncertainty that said item was the exact same item retrieved from the appellant when he was arrested, is not a mere trivial matter, but a major lapse that is fatal to the prosecution's case.

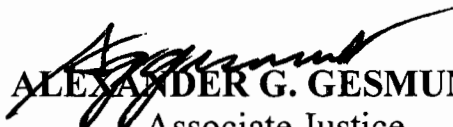
It is to be stressed that in drug cases, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.⁴²

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals dated October 16, 2014 in CA-G.R. CR. H.C. No. 06003, which affirmed the Decision of the Regional Trial Court of Quezon City, Branch 227 in Criminal Case No. Q-06-144570 is **REVERSED** and **SET ASIDE**.

Accordingly, appellant Marcelo Sanchez y Calderon is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five days from notice.

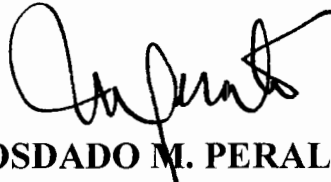
SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

⁴¹ Id. at 431-432.

⁴² *People v. Hementiza*, G.R. No. 227398, March 22, 2017.

WE CONCUR:

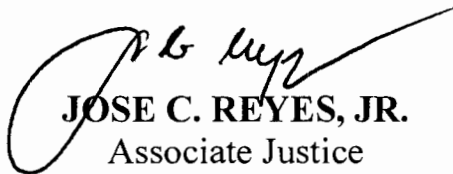


DIOSDADO M. PERALTA
Associate Justice
Chairperson



MARVIC M.V.F. LEONEN
Associate Justice


Reyes
ANDRES B. REYES, JR.
Associate Justice



JOSE C. REYES, JR.
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.



DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division



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.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

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Wilfredo V. Lattán
WILFREDO V. LATTAN
Division Clerk of Court
Third Division

OCT 29 2018

Agp