



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff-Appellee,

- versus -

NICO MAZO *y* YBAÑEZ
and JOEY DOMDOMA *y*
ABLETES,

Accused-Appellants.

G.R. No. 242273

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,

GESMUNDO,
HERNANDO,*

LOPEZ, and
ROSARIO,** JJ.

Promulgated:

NOV 23 2020

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RESOLUTION

LOPEZ, J.:

The conviction of Nico Mazo *y* Ybañez (Nico) for illegal sale and possession of dangerous drugs and Joey Domdoma *y* Abletes (Joey) for illegal sale of dangerous drugs, is the subject of review in this Motion for Reconsideration¹ assailing the Court's Resolution² dated July 15, 2019, which affirmed the Court of Appeals' (CA) Decision³ dated May 16, 2018 in CA-G.R. CR-HC No. 09348.

ANTECEDENTS

On January 12, 2017, the Station Anti-Illegal Drugs-Special Operations Task Group planned a buy-bust operation against Nico based on an

* Designated additional Member in lieu of Associate Justice Amy C. Lazaro-Javier *per* raffle dated November 9, 2020.

** Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

¹ *Rollo*, pp. 41-58.

² *Id.* at 39-40.

³ *Id.* at 2-16; penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Fernanda Lampas Peralta and Amy C. Lazaro-Javier (now a Member of this Court).

information that he is selling drugs in Barangay La Paz, Makati City. After the briefing, PS/Insp. Valmark C. Funelas designated PO1 Andrew O. Amante (PO1 Amante) as poseur-buyer, and PO1 Nathaniel Maculi and PO1 Stephanie Limjap (PO1 Limjap), as back-ups.⁴

About midnight the following day, the entrapment team together with the informant went to Sunrise Street, Barangay La Paz, Makat City. Thereat, they saw two men and one woman standing at the street. The informant told PO1 Amante, “[s]ir yung matangkad na bata[,] si Nico yun, yung dalawang kasama nya[,] bata nya yun.” The informant then introduced PO1 Amante to Nico as his friend who would buy ₱500.00 worth of *shabu*. Thus, Nico ordered his companions and said, “Joey kunin mo ang pera[,] bigay mo kay Joy.” Accordingly, PO1 Amante gave the buy-bust money to Joey who handed it to Joy.⁵ Thereafter, Nico retrieved from his left pocket three plastic sachets containing white crystalline substance. Nico picked one sachet and uttered, “Joey, bigay mo ‘to kay pare ko.” Joey got the sachet (later marked with “NICO”), and handed it to PO1 Amante. At that moment, PO1 Amante scratched his cheek which served as the pre-arranged signal that the transaction has been consummated.⁶

The rest of the team rushed in and arrested Nico, Joey and Joy. After frisking the suspects, PO1 Amante recovered from Nico two plastic sachets containing white crystalline substance (later marked with “NICO-1” and “NICO-2”), while PO1 Limjap found from Joy the buy-bust money. The police officers proceeded to the *barangay* hall where they conducted an inventory and photograph of the seized items in the presence of Barangay Kagawad Christopher Cabo.⁷ After investigation, the suspects were identified as Nico Mazo y Ibañez @ “Nico,” Joey Domdoma y Abletes @ “Joey,” and Mary Joy Garcia y Vitug @ “Joy.”⁸

Afterwards, PO1 Amante personally delivered the confiscated items to PCI Ofelia Lirio Vallejo of the Southern Police District Crime Laboratory Office for examination.⁹ The examination of the substance yielded positive results for methamphetamine hydrochloride.¹⁰ Nico, Joey and Joy were then charged with violations of Sections (Sec.) 5 and 11, Article II of Republic Act (RA) No. 9165¹¹ before the Regional Trial Court (RTC), to wit:

[Criminal Case No. R-MKT-17-00179-CR for illegal sale of dangerous drugs against Nico, Joey and Joy]

⁴ *Id.* at 4.

⁵ *Id.* at 4-5. The buy-bust money is a 500-peso bill with SN# QJ113880; records, p. 21.

⁶ *Id.* at 5.

⁷ Records, pp. 123-124.

⁸ *Id.* at 142.

⁹ *Id.* at 130, 132.

¹⁰ *Id.* at 101.

¹¹ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES; signed on June 7, 2002.



On the 13th day of January 2017, in the city of Makati, the [sic] Philippines, accused, mutually helping and confederating with one another, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, distribute and transport zero point twelve (0.12) gram of Methamphetamine Hydrochloride, a dangerous drug, in consideration of the amount of Php500.

CONTRARY TO LAW.¹²

[Criminal Case No. R-MKT-17-00180-CR for illegal possession of dangerous drugs against Nico]

On the 13th day of January 2017, in the city of Makati, the [sic] Philippines, accused, mutually helping and confederating with one another, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in their possession, direct custody and control three (3) small heat-sealed plastic transparent sachets containing a total of zero point twenty-two (0.22) gram of Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.¹³

Nico, Joey and Joy denied the accusations. Nico claimed that he was with Joy sleeping inside their house when several men barged in and brought them to the police station.¹⁴ On the other hand, Joey narrated that he was on his way to buy food when a policeman arrested him.¹⁵

On March 29, 2017, the RTC convicted Nico and Joey of illegal sale of dangerous drugs. Also, it held Nico guilty of illegal possession of dangerous drugs. The RTC gave credence to the prosecution's version as to the transaction that transpired between them and the poseur-buyer. However, Joy was acquitted,¹⁶ thus:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. R-MKT-17-0[0]179-CR, the court finds accused, Nico Mazo y Ybanez and Joey Domdoma y Abletes, GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. No. 9165 and sentences each of them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos ([P]500,000.00). On the other hand, the court ACQUITS their co-accused, Mary Joy Garcia y Vitug, of the offense charged on reasonable doubt.

¹² *Records*, p. 1.

¹³ *Id.* at 41.

¹⁴ TSN, March 22, 2017, pp. 19-31; records, pp. 247-259.

¹⁵ TSN, March 22, 2017, pp. 3-18; *id.* at 231-246.

¹⁶ CA *rollo*, pp. 61-68; penned by Presiding Judge Edgardo M. Caldoná.



2. In Criminal Case No. R-MKT-17-00180-CR, the court finds accused Nico Mazo y Ybanez, GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos ([P]300,000.00).

X X X X

SO ORDERED.¹⁷

Aggrieved, Nico and Joey elevated the case to the CA docketed as CA-G.R. CR-HC No. 09348. They argued that no actual buy-bust operation transpired and that they were framed-up. Moreover, the apprehending officers did not comply with the chain of custody requirement.¹⁸ On May 16, 2018, the CA affirmed the RTC's findings and ruled that the prosecution preserved the integrity and evidentiary value of the dangerous drugs, thus:

From the testimony of PO1 Amante, the prosecution established that he had the custody of the drug seized from accused-appellants from the moment they were arrested, during the time that they were transported to the police station, and up to the time that the drug was submitted to the crime laboratory for examination. The identification of the seized items in court by the same witness, as well as all the other documentary evidence (except the *Inventory Receipt*) and the testimony of the forensic chemist, who examined the subject drugs and personally brought the said illegal drugs to the trial court, were also stipulated by the parties. It is therefore safe to conclude that, to the unprejudiced mind, the testimonies show without a doubt that the evidence seized from the accused-appellant at the time of the buy-bust operation was the same one tested, introduced, and testified to in court. As aptly ruled by the trial court:

The unbroken chain of custody was established in the instant cases through the following link[s]: (1) PO1 Andrew Amante recovered and marked the sachets containing white crystalline substance with "NICO", "NICO-1", "NICO-2"; (2) a request for laboratory examination of the seized items was signed by PO3 Voltaire Esguerra, the investigator on case to whom the subject pieces of evidence were presented by PO1 Amante after the inventory; (3) the delivery by PO1 Andrew Amante of the same items to the Southern Police District Crime Laboratory to PCI Ofelia Lirio Vallejo who received the same from Amante; [4] Physical Science Report No. D-103-17 was prepared by PCI Ofelia Lirio Vallejo which confirmed after due examination that the marked items seized from the accused were *shabu*; and [5] the eventual presentation and identification of the items which were brought officially to the court by PCI Ofelia Lirio Vallejo and marked as Exhibit "V" to "X".

¹⁷ *Id.* at 67-68.

¹⁸ *Id.* at 33-59.

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WHEREFORE, the appeal is DENIED. The *Decision* dated March 29, 2017 of the Regional Trial Court, Branch 65, Makati City, in Criminal Case Nos. R-MKT-17-00179-CR and R-MKT-17-00180-CR, is hereby affirmed.

SO ORDERED.¹⁹

On July 15, 2019, we dismissed the appeal of Nico and Joey for their failure to show how the CA committed any reversible error. Aggrieved, they sought a reconsideration arguing that the police officers did not observe the proper handling and custody of the seized items.

RULING

We acquit.

In illegal sale and possession of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offenses and the fact of its existence is vital to a judgment of conviction.²⁰ Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.²¹ Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.²² Here, the records reveal a broken chain of custody.

The first stage in the chain of custody is the marking of dangerous drugs which is indispensable in the preservation of their integrity and evidentiary value. The marking operates to set apart as evidence the dangerous drugs from other materials, and forestalls switching, planting, or contamination of evidence. The succeeding handlers of dangerous drugs will also use the marking as reference.²³ In *People v. Baculi*,²⁴ this Court ruled that the authorities did not comply with the chain of custody requirement absent definite statement as to where the marking of the seized items took place. In that case, the joint affidavit of the arresting officers and their testimonies failed to point the actual place of marking. In this case, the prosecution, likewise, failed to account the details on how the confiscated items were

¹⁹ *Rollo*, pp. 14-16.

²⁰ *People v. Partoza*, 605 Phil. 883, 890 (2009). See also *People v. Cariño*, G.R. No. 233336, January 14, 2019; *People v. Crispo*, 828 Phil. 416, 436 (2018); *People v. Sanchez*, 827 Phil. 457, 472 (2018); *People v. Magsano*, 826 Phil. 947, 964-965 (2018); *People v. Manansala*, 826 Phil. 578, 592 (2018); *People v. Miranda*, 824 Phil. 1042, 1058 (2018); and *People v. Mamangon*, 824 Phil. 728, 742 (2018).

²¹ *People v. Ismael*, 806 Phil. 21, 33 (2017).

²² *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

²³ *People v. Ismael*, 806 Phil. 21, 31-32 (2017), citing *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

²⁴ G.R. No. 233802, November 20, 2019.

marked. PO1 Amante testified that he marked the sachet of *shabu* he bought with “NICO,” and the two sachets he recovered during frisking with “NICO-1” and “NICO-2.” Yet, there was no showing where and when the seized drugs were marked. PO1 Amante simply stated in his affidavit that the drugs were “*later marked*”²⁵ without providing the details surrounding the initial handling of the drugs. Neither was the issue clarified during PO1 Amante’s testimony in open court. In other words, the place of marking remains unknown. Corollarily, lacking material details regarding the marking of the seized drugs, the prosecution failed to remove any suspicion of tampering, switching, or planting of evidence.

Similarly, the chain of custody rule requires the conduct of inventory and photograph of the seized items *immediately after seizure and confiscation*, which is intended by law to be made immediately after, or at the place of apprehension. If not practicable, the implementing rules allow the inventory and photograph as soon as the buy-bust team reaches the nearest police station, or the nearest office of the apprehending team.²⁶ In this case, the inventory and photograph of the confiscated items were not made immediately at the place of arrest but at the *barangay* hall. The police officers only made a general statement that the place of arrest was hostile without elaborating any threat on their security.²⁷

Lastly, the absence of a representative of the National Prosecution Service or the media as an insulating witness to the inventory and photograph of the seized items, puts serious doubt as to the integrity of the confiscated items.²⁸ Admittedly, only an elected public official signed the inventory of evidence. There was no attempt on the part of the entrapment team to comply with the law and its implementing rules despite the planned buy-bust operation. The operatives also failed to provide any justification showing that the integrity of the evidence had all along been preserved. Worse, it appears that the *barangay* official was absent when the drugs were seized. The prosecution stipulated that Kagawad Cabo “*had no personal knowledge as to the circumstances regarding the alleged confiscation of the items x x x.*”²⁹ On this point, it must be stressed that the presence of the witnesses must be secured not only during the inventory but, more importantly, at the time of the warrantless arrest. It is at this point in which the presence of the witnesses is most needed, as it is their presence at the time of seizure and confiscation that

²⁵ Records, p. 141.

²⁶ *People v. Tomawis*, 830 Phil. 385, 405 (2018).

²⁷ Records, p. 142.

²⁸ The offense was allegedly committed on January 13, 2017. Hence, the applicable law is RA No. 9165, as amended by RA No 10640, entitled “An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the ‘Comprehensive Dangerous Drugs Act of 2002’”; approved on July 15, 2014, which took effect on July 23, 2014. See also OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) with an elected public official; and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory, and be given a copy thereof.

²⁹ Records, p. 93.

would belie any doubt as to the source, identity, and integrity of the seized drug.³⁰

We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.³¹ In *People v. Lim*,³² we explained that in case the presence of any, or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.³³ (Emphases in the original and citations omitted.)

Accordingly, in *People v. Caray*,³⁴ we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule under Sec. 21 of RA No. 9165. In *Matabilas v. People*,³⁵ sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance. In *People v. Aure*,³⁶ the inventory was conducted in the presence of a media representative only, and the policemen offered a perfunctory excuse that their team leader invited the three required witnesses, but to no avail. In *People v. Dela Torre*,³⁷ the

³⁰ *People v. Tomawis*, *supra* note 26, at 409.

³¹ *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

³² G.R. No. 231989, September 4, 2018.

³³ *Id.*

³⁴ G.R. No. 245391, September 11, 2019.

³⁵ G.R. No. 243615, November 11, 2019.

³⁶ G.R. No. 237809, January 14, 2019.

³⁷ G.R. No. 238519, June 26, 2019.

prosecution failed to explain why only an elected public official witnessed the inventory and photography of the seized items. In *People v. De Lumen*,³⁸ the prosecution did not bother to explain the absence of the representatives from the Department of Justice and the media during the physical inventory. In these cases, the integrity and evidentiary value of the seized items have been compromised for failure of the prosecution to justify non-compliance with the chain of custody requirement, or to show that it exerted earnest efforts in securing the required witnesses. We find no reason to deviate from these rulings.

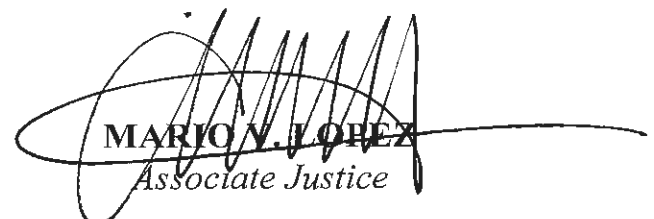
Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.³⁹ Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.⁴⁰

We reiterate that the provisions of Sec. 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the *very corpus delicti* of the crime. Hence, Nico and Joey must be acquitted of the charges against them given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the motion for reconsideration is **GRANTED**. The Court's July 15, 2019 Resolution is **REVERSED** and **SET ASIDE**. Nico Mazo y Ybañez and Joey Domdoma y Abletes are **ACQUITTED** in Criminal Case Nos. R-MKT-17-00179-CR and R-MKT-17-00180-CR, and are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Resolution.

SO ORDERED.



MARIO V. LOPEZ
Associate Justice


³⁸ G.R. No. 240749, December 11, 2019.

³⁹ *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Mallillin v. People*, 576 Phil. 576, 593 (2008).

⁴⁰ *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



ALEXANDER G. GESMUNDO
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


RICARDO R. ROSARIO
Associate Justice

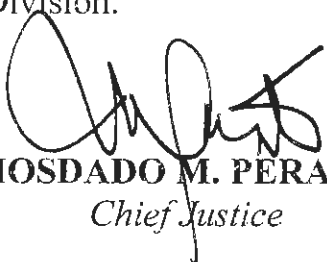
ATTESTATION

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


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Chief Justice