



Republic of the Philippines
Supreme Court
Baguio City

CERTIFIED TRUE COPY

Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAY 27 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 206766

Present:

VELASCO, JR., J.
Chairperson,
PERALTA,
DEL CASTILLO,*
PEREZ, and
REYES, JJ.

-versus-

EDUARDO YEPES,
Accused-Appellant.

Promulgated:

April 6, 2016

Wilfredo V. Lapitan

X-----X

DECISION

PEREZ, J.:

Before us for review is the Decision¹ of the Court of Appeals in CA-G.R. CEB CR HC No. 01007 dated 21 September 2012, which dismissed the appeal of accused-appellant Eduardo Yepes and affirmed with modification the Judgment² of the Regional Trial Court (RTC), Branch 28 of Catbalogan City in Criminal Case Nos. 6125-6126 finding accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165, to wit:

* Additional Member per Raffle dated 10 February 2016.

¹ Rollo, pp. 3-12; Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles concurring.

² Records, pp. 175-190; Penned by Judge Sibannah E. Usman.

That on or about the 29th day of July 2004, at about 6:20 o'clock in the evening, more or less, at vicinity of Purok 6, Barangay Guindapunan, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to gain and without being authorized by law, did, then and there, wilfully, unlawfully and feloniously sell and hand over One (1) Heat sealed transparent plastic bag containing white crystalline substance called methylamphetamine Hydrochloride locally known as "shabu", a dangerous drug, having the following marking and net weight, to wit: "A-1-("JFI-1")-0.03 gram", as per Chemistry Report No. D-276-2004, to PO1 Ervin A. Ariño who acted as poseur-buyer in a "buy-bust" operation conducted by the Samar Provincial Police Office (PPO) of Catbalogan, Samar, as evidenced by the Two (2) pieces of One Hundred Pesos Bills (₱100.00) marked money with Serial Numbers RN535127 and QJ837907, respectively.³

At his arraignment, accused-appellant pleaded not guilty. Trial ensued.

The prosecution presented as witnesses Police Officer 2 Ervin Ariño (PO2 Ariño), Police Senior Inspector Benjamin Aguirre Cruto (P/S Insp. Cruto) PO2 Roy Lapura (PO2 Lapura), Senior Police Officer 4 Romy dela Cruz (SPO4 dela Cruz), PO3 Nelson Lapeciros (PO3 Lapeciros) and PO3 Jay Ilagan (PO3 Ilagan).

PO2 Ariño testified that on 29 July 2004, at around 6:20 in the evening, he was with PO2 Lapura and PO2 Arthur Perdiso (PO2 Perdiso) at Purok 6, *Barangay* Guindapunan, Catbalogan City to conduct a buy-bust operation on a person yet to be identified and accompanied by their police asset. The operation had been authorized by Police Inspector Carlos G. Vencio in the afternoon of the same day. The police asset whose name PO2 Ariño failed to remember on the witness stand, arrived in a motorcycle with accused-appellant as passenger. PO2 Ariño, as *poseur* buyer, then asked accused-appellant if he had "some stuff" and the latter nodded. PO2 Ariño gave him two (2) One Hundred Peso (₱100.00) bills in exchange for a small sachet of what PO2 Ariño believed to be *shabu* based on its appearance. PO2 Ariño removed his cap to signal the consummation of the operation to his companions who had been hiding behind a concrete wall about 5-6 meters away. When his companions arrived and arrested accused-appellant, PO2 Ariño headed for the police station to report the outcome of the operation. Thereat, he surrendered the plastic sachet to PO3 Ilagan.⁴

³ Id. at 1-2.

⁴ TSN, 26 July 2006, pp. 4-11.



PO2 Lapura confirmed that they had not been informed about the identity of the suspect before the buy-bust operation and that the police asset was to identify him for them. During the buy-bust operation, PO2 Lapura together with PO2 Perdiso and SPO4 dela Cruz been stationed more or less ten (10) meters from the location of the alleged buy-bust operation. PO2 Lapura saw accused-appellant and PO2 Ariño hand one another something and when the latter executed the pre-arranged signal, PO2 Lapura and PO2 Perdiso approached them. PO2 Lapura informed the accused-appellant of his constitutional rights and conducted a body search on the latter which yielded two (2) small plastic sachets and two (2) pieces of One Hundred Peso (₱100.00) bills. PO2 Lapura subsequently handed the sachets to SPO4 dela Cruz who had remained at their original location and the bills to PO3 Ilagan at the police station. On cross-examination, PO2 Lapura stated that from his vantage point, he could not see the plastic sachet but merely saw accused-appellant hand PO2 Ariño something. He also stated that he cannot ascertain whether it was *shabu* due to the distance.⁵

SPO4 dela Cruz narrated that he had been waiting at the *barangay* hall when the buy-bust team together with accused-appellant passed by *en route* to the police station. PO2 Ariño handed him three (3) sachets. SPO4 dela Cruz proceeded to examine the contents of one of the sachets. His conclusion that the same was *shabu* is embodied in a Certification of Drug Field Test dated 29 July 2004.⁶

PO3 Ilagan, as evidence custodian, testified that three (3) sachets of *shabu* had been surrendered to him at the police station by officers PO2 Ariño and Lapura. He marked the evidence as “JFI” and submitted them to the Philippine Drug Enforcement Agency (PDEA) for examination.⁷

PO3 Lapeciros stated that he had photocopied five (5) pieces of One Hundred Peso (₱100.00) bills and had them subscribed by the Office of the Clerk of Court for use in buy-bust operations.⁸

P/S Insp. Cruto testified that he had conducted a physical examination of the substance alleged to be *shabu*.⁹ His positive findings are encapsulated in Chemistry Report No. D-276-2004.¹⁰

⁵ TSN, 7 March 2007, pp. 8-18.

⁶ TSN, 24 May 2007, pp. 4-7.

⁷ TSN, 20 June 2007, pp. 12-21.

⁸ Id. at 4-8.

⁹ TSN, 7 February 2007, pp. 5-7.

¹⁰ Exhibit Folder, p. 10.

Accused-appellant testified on his behalf and vehemently denied the indictment. He narrated that on the date of the alleged buy-bust operation, he had just come from the public cemetery and was walking to the town proper when a person named Lagrimas, known to be a police asset, came around driving a motorcycle. Lagrimas requested accused-appellant to ride with him in his motorcycle and he acceded. Near the grandstand in *Barangay* Guindapunan, Lagrimas parked the motorcycle with several police officers, more than ten (10) of them, within distance. The police officers approached them and handcuffed accused-appellant. Lagrimas pulled out *shabu* from his shirt, gave it to one of the police officers who attempted to put it inside accused-appellant's pocket which the latter was able to resist. The police officers brought accused-appellant to the police station and there was shown the sachet of *shabu* but he denied any charges. The police officers told him "here, so that you can go free, because according to you, you have not committed any crime, here is Two Hundred (₱200.00) Pesos marked money, go to Guinsorongan, buy this 'shabu', to whoever you will give the money, that is the one we will apprehend." When accused-appellant refused the request, he was placed inside the detention cell.¹¹

On 19 December 2008, the RTC rendered judgment finding accused-appellant guilty of illegal sale of a dangerous drug. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, this Court hereby sentences the accused **EDUARDO YEPES Y CINCO**, beyond reasonable doubt for Violation of Section 5 of R.A. No. 9165 and, thus, punishes him to suffer a penalty of life imprisonment to death and to pay a fine of Five Hundred Thousand Pesos (P500,000.00). But however, acquits the accused of illegal possession of *shabu* under Section 11 of R.A. No. 9165.

Mr. Victor Templonuevo, OIC, Provincial Warden, is hereby directed to deliver the living body of accused Yepes to Abuyog Penal Colony immediately upon receipt of this judgment, unless otherwise, detained for some other causes. With *cost de officio*.¹²

Accused-appellant moved for a reconsideration and re-opening of the case, tendering a joint affidavit executed by four (4) affiants stating that no buy-bust operation took place on 29 July 2004, and that about the time of the alleged operation, accused-appellant was working at another place and that the latter is of good moral character and enjoys good standing in their community.¹³ This the RTC denied.¹⁴

¹¹ TSN, 27 February 2008, 4-18.

¹² Records, p. 190.

¹³ Id. at 205-207.

¹⁴ Id. at 214; Order dated 9 February 2009.

Accused-appellant filed a Notice of Appeal on 18 February 2009.¹⁵ On 21 September 2012, the Court of Appeals rendered the assailed judgment affirming with modification the trial court's decision. The Court of Appeals found accused-appellant guilty of the crime charged, or violation of Section 5, Article II of R.A. 9165.

Accused-appellant appealed his conviction before this Court. In a Resolution¹⁶ dated 08 July 2013, accused-appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties manifested that they will no longer file supplemental briefs as their arguments in their respective briefs are already sufficient.¹⁷

Accused-appellant asserts that the *shabu* was planted by the police officers and that there was no sufficient proof that the prosecution witnesses had indeed seen him sell *shabu*. In addition, the police officers failed to observe the proper procedure in the handling, custody and disposition of the seized drug.

The Court finds merit in the appeal.

The RTC anchored accused-appellant's conviction fundamentally on the testimonial evidence of the prosecution. The RTC brushed aside accused-appellant's defense of denial ruling that his evidence failed to overturn the presumption of regularity in the performance of official duties on the part of the police officers. Similarly, the Court of Appeals affirmed the judgment of the RTC, also lending greater credence to the testimonial evidence of the prosecution. According to the Court of Appeals, said evidence was found to have sufficiently established the elements of the crime charged, as well as the fact of preservation of the integrity and evidentiary value of the drug specimens seized. The appellate court also upheld the presumption of regularity in favor of the police officers.

The Court reviewed the records of the instant case and saw a different story. The police officers had indeed committed serious lapses in procedure in the conduct of the buy-bust operation on 29 July 2004. The Court also finds that the evidence for the prosecution falls short of the exacting degree of proof beyond reasonable doubt required under our criminal laws.

¹⁵ Id. at 215.

¹⁶ *Rollo*, p. 16.

¹⁷ Id. at 25.

Generally, the trial court's findings of fact, especially when affirmed by the Court of Appeals, are entitled to great weight and will not be disturbed on appeal. This rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied as in the case at bar.¹⁸

To secure a conviction for illegal sale of *shabu*, the following elements must be present: (a) the identities of the buyer and the seller, the object of the sale and the consideration; and (b) the delivery of the thing sold and the payment for the thing. It is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.¹⁹ Proof beyond reasonable doubt in criminal prosecutions for the sale of illegal drugs demands that unwavering exactitude be observed in establishing the *corpus delicti*, the body of crime whose core is the confiscated illicit drug.²⁰

The reason for this the Court elucidated in *People v. Tan*,²¹ to wit:

[B]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heron can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants guilt. It should have given more serious consideration to the *pros* and *cons* of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.

The Court carefully examined the pieces of evidence on record, read the testimonies of the witnesses for the prosecution and the defense, and noted the following material points:

1. Only the police asset/informant and PO2 Ariño had personal knowledge of the buy-bust operation, if at all one was done. Interestingly, the prosecution never presented the police asset. Neither had any statement

¹⁸ See *People v. Kamad*, 624 Phil. 289, 299-300 (2010).

¹⁹ *People v. Secreto*, G.R. No. 198115, 27 February 2013, 692 SCRA 298, 306-307.

²⁰ *People v. Beran*, G.R. No. 203028, 15 January 2014, 715 SCRA 165, 186 citing *People v. Pagaduan*, 641 Phil. 432 (2010).

²¹ 401 Phil. 259, 273 (2000).



been taken from him which was material considering that he was the lone source of information regarding accused-appellant's supposed illegal activities. It is noteworthy that the identity of the accused-appellant had not been known to any of the participants of the buy-bust team and that he could only be identified through the police asset. It is also remarkable that PO2 Ariño could not remember the police asset's name on the witness stand. No surveillance was conducted to identify the alleged drug-pusher who would be the subject of the entrapment. There was even no evidence regarding the dependability or reliability of the police asset.

2. PO2 Ariño testified that immediately after his companions apprehended accused-appellant, he went back to the police station to report the incident and hand over **one (1)** plastic sachet to PO3 Ilagan. His actuations were not according to procedure. PO2 Ariño left the scene shortly. There was no mention that he marked the sachet, nor that he took photographs and made an inventory of the same. PO2 Ariño stated that he had the sachet marked but could not recall its marking. Most importantly, PO2 Ariño stated that he surrendered only **one (1)** sachet and that he surrendered the same to **PO3 Ilagan**.
3. PO2 Lapura was positioned with SPO4 dela Cruz and PO2 Perdiso some ten (10) meters away from the location of the buy-bust operation. He admitted that he merely observed the gestures of the PO2 Ariño and accused-appellant and that he could not ascertain from his vantage point whether the plastic sachet indeed contained *shabu*. PO2 Lapura also testified that his body search on accused-appellant yielded two (2) small plastic sachets and two (2) pieces of One Hundred Peso (₱100.00) bills. PO2 Lapura handed the **sachets to SPO4 dela Cruz** who had remained at their original post and the **bills to PO3 Ilagan at the police station**.
4. SPO4 dela Cruz did not witness the buy-bust operation as **he had waited at the barangay hall**. There, PO2 Ariño allegedly handed him **three (3) sachets**. He opened one (1) sachet, **tasted it and concluded that the same and the other two (2) sachets all contained shabu**.
5. PO3 Ilagan testified that, as evidence custodian, **three (3) sachets** of *shabu* had been surrendered to him at the police station by **officers PO2 Ariño and Lapura**. He marked the evidence as "JFI" and submitted them to PDEA for examination. There was no mention whether the marking had been made in the presence of accused-appellant.



6. PO3 Lapeciros and P/S Insp. Cruto only performed limited tasks and had no personal knowledge of the buy-bust operation.

Evidently, there are material inconsistencies between and among the testimonies of the police officers raising doubts whether an entrapment operation had indeed been made; and serious questions regarding the integrity of the *corpus delicti* if truly there had been a buy-bust operation. Considering that the police asset was not presented, the evidence against accused-appellant consists solely of PO2 Ariño's declaration that there was a buy-bust operation conducted on a drug-pusher who turned out to be accused-appellant. It is PO2 Ariño's positive declaration versus accused-appellant's denial. While law enforcers enjoy the presumption of regularity in the performance of 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.²² And although the defense of denial may be weak, courts should not at once look at them with disfavor as there are situations where an accused may really have no other defenses which, if established to be truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak.²³

Even assuming that an entrapment operation in truth had been made, the presumption that police officers enjoy is also overcome by evidence of their procedural lapses in the handling of the seized drug. In illegal drugs cases, the identity and integrity of the drugs seized must be established with the same unwavering exactitude as that required to arrive at a finding of guilt.²⁴

The procedure set forth in Section 21 of R.A. No. 9165 is intended precisely to ensure the identity and integrity of dangerous drugs seized. This provision requires that upon seizure of illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.

Section 21 was laid down by Congress as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the

²² *People v. Cañete*, 433 Phil. 781, 794 (2002).

²³ *People v. Ladrillo*, 377 Phil. 904, 917 (1999).

²⁴ *Mallillin v. People*, 576 Phil. 576, 586-587 (2008).



gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Under the principle that penal laws are strictly construed against the government, stringent compliance therewith is fully justified.²⁵

In the present case, the procedure was not observed at all. Such noncompliance raises questions whether the illegal drug items were the same ones allegedly seized from accused-appellant.

Although justifiable grounds may excuse noncompliance with the requirements of Section 21 as long as the integrity and evidentiary value of the seized items are properly preserved, the police officers in the present case presented no justifiable reason for the non-observance of the procedure. Lamentably, both RTC and the Court of Appeals failed to even note at all that there were deficiencies in the handling of the seized evidence much less inquire into the reasons for the non-observance of procedure.

Most important, the Court finds as established fact that the integrity and evidentiary value of the illegal drugs seized were not shown to have been preserved. Contrarily, the records of the case bear out the glaring fact that the chain of custody of the seized illegal drugs was broken even at the very first link thereof.

To recall, the testimonial evidence of the prosecution could not even be sure about the number of sachets seized from accused-appellant and to whom it was first handed to by PO2 Ariño. PO2 Ariño testified that he handed it to PO3 Ilagan at the police station who in turn testified that he received three (3) sachets from **both** PO2 Ariño and PO2 Lapura. PO2 Lapura said that he gave two (2) sachets to SPO4 dela Cruz who had been **remained** at his original post. SPO4 dela Cruz however stated that **at the barangay hall** where he had been staying the whole time, PO2 Ariño handed him three (3) sachets. These are confusing testimonies of witnesses who are themselves confused.

Corpus delicti is the “actual commission by someone of the particular crime charged.”²⁶ In illegal drug cases, it refers to the illegal drug item itself.²⁷ When there are reservations about the identity of the illegal drug item allegedly seized from the accused, the actual commission of the crime

²⁵ *Rontos v. People*, G.R. No. 188024, 5 June 2013, 697 SCRA 372, 379-380.

²⁶ *People v. Roble*, 663 Phil. 147, 157 (2011).

²⁷ *People v. Alejandro*, 671 Phil. 33, 44 (2011).

charged is put into serious question and courts have no alternative but to acquit on the ground of reasonable doubt.

Even if accused-appellant failed to present evidence with respect to his defense of denial or the ill motive that impelled the police officers to falsely impute upon him the crime charged, the same is of no moment. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.²⁸ If the prosecution cannot establish the guilt of accused-appellant beyond reasonable doubt, the defense is not even required to adduce evidence. The presumption of innocence on the part of accused-appellant in this case thus must be upheld.

WHEREFORE, we **REVERSE** and **SET ASIDE** the Decision dated 21 September 2012 of the Court of Appeals in C.A.-G.R. CEB CR HC No. 01007. Accused-appellant Eduardo Yepes is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is confined for another lawful cause.

Let a copy of the decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action taken thereon within five (5) days from receipt of this Decision.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

²⁸ *People v. De Guzman*, 630 Phil. 637, 655 (2010).


DIOSDADO M. PERALTA
 Associate Justice


MARIANO C. DEL CASTILLO
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

ATTESTATION

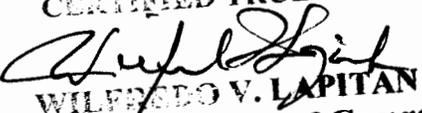
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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

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WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 MAY 27 2016