



Republic of the Philippines
Supreme Court
Manila

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-appellee,

G.R. No. 224581

Present:

-versus-

CAGUIOA, J., Chairperson,
LAZARO-JAVIER,
INTING,
ZALAMEDA, and
KHO, JR., JJ.

DIOSDADO REBUTON y
MELENDEZ a.k.a. “Dado” and
MARILOU REBUTAZO y
ENCABO a.k.a. “Loi,”

Accused;

Promulgated:

MARILOU REBUTAZO y
ENCABO a.k.a. “Loi,”

Accused-appellant.

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RESOLUTION

CAGUIOA, J.:

This Court resolves the Motions for Reconsideration¹ dated April 2, 2018 and March 25, 2018 and the Supplemental Motion for Reconsideration² dated April 11, 2018 filed by accused-appellant Marilou Rebutazo (Rebutazo) assailing this Court’s Resolution³ dated December 13, 2017, the dispositive portion of which reads:

WHEREFORE, the appeal is **DENIED**. The Court of Appeals Decision dated 27 May 2015 in CA-G.R. CR-HC No. 01718, which affirmed the RTC Decision dated 2 July 2013 in Criminal Case Nos. 20088, 20090, and 20089, finding accused-appellant guilty beyond reasonable doubt of violation of Sections 5, 11, and 12 of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.⁴ (Emphasis in the original)

¹ Rollo, pp. 87–107 and 109–120.

² Id. at 122–139.

³ Id. at 60–71.

⁴ Id. at 71.

THE ANTECEDENTS

Accused Diosdado Rebuton (Rebuton) and Rebutazo were charged with violation of the provisions of Republic Act No. (R.A.) 9165, under the following Informations:

[Criminal Case No. 20088]

That on or about the 11th day of August, 2010, in the City of Dumaguete Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring with one another and not being then authorized by law, did, then and there willfully, unlawfully and feloniously sell to a poseur buyer [o]ne (1) heat-sealed transparent plastic sachet containing 0.03 gram of Methamphetamine Hydrochloride, otherwise known as "SHABU", a dangerous drug.

Contrary to Section 5, Article II of R.A. 9165.⁵

[Criminal Case No. 20089]

That on or about the 11th day of August, 2010, in the City of Dumaguete Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring with one another and not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess or have in their control [o]ne (1) piece glass tooter which is an equipment, instrument, apparatus or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body, [o]ne (1) folded aluminum foil and [o]ne rolled aluminum foil intended to be used as burner for shabu.

Contrary to Section 12[,] Article II of R.A. 9165.⁶

[Criminal Case No. 20090]

That on or about the 11th day of August, 2010, in the City of Dumaguete Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring with one another and not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess two (2) heat-sealed transparent plastic sachet[s] containing a total net weight of 0.19 gram of Methamphetamine Hydrochloride, otherwise known as "SHABU", a dangerous drug.

Contrary to Section 11, Article II of R.A. 9165.⁷

Upon arraignment, the accused entered a plea of not guilty after which the joint trial for the three criminal cases ensued.⁸

According to the prosecution, the local National Bureau of Investigation (NBI) office received confidential information as to the illegal drug activities of Rebuton, which prompted the conduct of a buy-bust

⁵ *Id.* at 60–61.

⁶ *Id.* at 61.

⁷ *Id.*

⁸ *Id.*



operation. During the operational briefing, the team agreed that a missed call from Police Officer 3 Ramon Bernard Pedeglorio (PO3 Pedeglorio), the designated poseur-buyer, to Senior Police Officer 3 Allen June Germodo (SPO3 Germodo) would serve as a signal for a consummated transaction. SPO3 Germodo then marked a PHP 500.00 bill to be used as marked money.⁹

On August 11, 2010, PO3 Pedeglorio and the confidential informant went to the residence of Rebuton, while the designated backup team positioned themselves nearby. The confidential informant called out to Rebuton, and told the latter that PO3 Pedeglorio wanted to buy *shabu*. PO3 Pedeglorio then gave the marked money to Rebuton to buy *shabu* worth PHP 500.00.¹⁰ Rebuton allegedly called for Rebutazo and gave the marked money to her. Rebutazo took the PHP 500.00 bill and told Rebuton, "*Tagae na.*" Thereafter, Rebuton handed a heat-sealed plastic sachet containing white crystalline granules to PO3 Pedeglorio.¹¹

After the sale, Rebuton invited PO3 Pedeglorio inside his house and the latter obliged. They went inside a small room where there was a small table. Upon that table were two more sachets of suspected *shabu*, lighters, rolled tin foil, another tin foil with white granule residue, scissors, and an improvised glass tooter. PO3 Pedeglorio then surreptitiously made a call to SPO3 Germodo.¹²

As Rebutazo started sniffing suspected *shabu* residue on a tin foil handed to her by Rebuton, the backup team rushed inside the room. PO3 Pedeglorio then arrested the accused Rebuton and Rebutazo, and advised them of their constitutional rights. Thereafter, PO3 Pedeglorio handed the sachet of suspected *shabu* to SPO3 Germodo for marking. SPO3 Germodo marked the sachet recovered from PO3 Pedeglorio and the items recovered on the table.¹³ After approximately 30 minutes,¹⁴ witnesses from the media, the local Department of Justice, the local Philippine Drug Enforcement Agency and the barangay arrived to witness the conduct of the inventory.¹⁵ The team then brought the two accused, together with the seized items, to the NBI office for proper disposition and booking.¹⁶

From the NBI office, PO3 Pedeglorio brought the accused and the seized items to the Provincial Crime Laboratory. There, Police Chief Inspector Josephine S. Llana (PCI Llana) took custody of the seized items, re-marked them, and conducted a laboratory examination. The weight of the three heat-sealed transparent plastic sachets suspected to contain *shabu* were 0.03

⁹ *Id.* at 61–62.

¹⁰ *See* at 62.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 63.

¹⁴ TSN, SPO3 Allen June Germodo, January 30, 2013, pp. 21–22 and 24.

¹⁵ *Rollo*, p. 63.

¹⁶ *Id.* at 64.



gram,¹⁷ 0.01 gram¹⁸ and 0.18 gram.¹⁹ All specimens tested positive for *shabu*. PCI Llena then kept the specimens in the evidence vault of the crime laboratory, to which only she had access, until these were submitted to the lower court for joint trial of the cases.²⁰

On the other hand, the accused interposed the defense of denial and set up. They claimed that on August 11, 2010, the police officers suddenly barged in and arrested them while they were in the act of sniffing *shabu* inside Rebuton's house. They then saw SPO3 Germodo place two plastic sachets of suspected *shabu* on the table, a PHP 500.00 bill, and drug paraphernalia. They also insisted that there was nothing more to possess when they were arrested, since they had already consumed the *shabu* they had bought earlier.²¹

On July 2, 2013, the Regional Trial Court (RTC) rendered a Joint Judgment²² finding the accused guilty beyond reasonable doubt of the crimes charged. The dispositive portion of the Joint Judgment reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 20088, the accused DIOSDADO REBUTON y MELENDEZ aka "DADO" and MARILOU REBUTAZO y ENCABO aka "LOI" are hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.03 gram of *shabu* in violation of Section 5, Article II of RA 9165 and are hereby sentenced each to suffer a penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings "DR-BB" containing 0.03 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 20090, the accused DIOSDADO REBUTON y MELENDEZ aka "DADO" and MARILOU REBUTAZO y ENCABO aka "LOI" are hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.19 gram of *shabu* in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced each to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and each to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The two (2) heat-sealed transparent plastic sachets with markings "DR-MR-P" and "DR-MR-P1" containing 0.01 gram and 0.18 gram of *shabu*, respectively, or a total net weight of 0.19 gram of *shabu* are hereby

¹⁷ *Id.* One heat-sealed transparent plastic sachet with the marking "DR-BB" and re-marked as "Specimen A," subject of Criminal Case No. 20088.

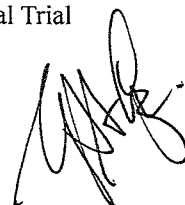
¹⁸ *Id.* One heat-sealed transparent plastic sachet with the marking "DR-MR-P" and re-marked as "Specimen B," subject of Criminal Case No. 20090.

¹⁹ *Id.* One heat-sealed transparent plastic sachet with the marking "DR-MR-P1" and re-marked as "Specimen C," subject of Criminal Case No. 20090.

²⁰ *Id.*

²¹ *Id.* at 65.

²² RTC records, pp. 244-262. Penned by Judge Rafael Crescencio C. Tan, Jr. of Branch 30, Regional Trial Court of Negros Oriental, Dumaguete City.



confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

3. In Criminal Case No. 20089, the accused DIOSDADO REBUTON y MELENDEZ aka "DADO" and MARILOU REBUTAZO y ENCABO aka "LOI" are hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of dangerous drug paraphernalia (one [1] piece of glass tooter, one [1] folded aluminum foil containing traces of *shabu* and one [1] rolled aluminum foil) in violation of Section 12 [sic], Article II of RA 9165 and are hereby sentenced each to suffer a penalty of six (6) months and one (1) day as minimum term to two (2) years as maximum term and each to pay a fine of Ten Thousand Pesos (P10,000.00).

The one (1) piece glass tooter with markings "DR-MR-P2," the one (1) folded aluminum foil containing traces of *shabu* with markings "DR-MR-P4" and the one (1) rolled aluminum foil with markings "DR-MR-P3" are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused DIOSDADO REBUTON y MELENDEZ aka "DADO" and MARILOU REBUTAZO y ENCABO aka "LOI" shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.²³ (Emphasis in the original)

On appeal, the Court of Appeals affirmed *in toto* the findings of the RTC and upheld the conviction of the accused.²⁴ Aggrieved, the accused filed an appeal before this Court.

In the Resolution²⁵ dated December 13, 2017 of the First Division, this Court found that the lower courts correctly found the accused guilty beyond reasonable doubt of violation of Sections 5, 11, and 12, Article II of R.A. 9165.

Hence, the motions for reconsideration²⁶ filed by Rebutazo.

On June 8, 2018, Rebutazo also filed an Omnibus Motion for Plea Bargaining and to Hold in Abeyance the Resolution of Accused-Appellant's Motion for Reconsideration²⁷ (Omnibus Motion), invoking the ruling in *Estipona v. Lobrigo*²⁸ with respect to plea bargaining in drugs cases and praying that she be allowed to plea bargain in her case.

²³ *Id.* at 260–261.

²⁴ *Rollo*, pp. 4–22. The May 27, 2015 Decision in CA-G.R. CR-HC No. 01718 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi of the Special Twentieth Division, Court of Appeals, Cebu City.

²⁵ *Id.* at 60–71.

²⁶ *Id.* at 87–107, 109–120 and 122–139.

²⁷ *Id.* at 141–150.

²⁸ 816 Phil. 789 (2017) [Per J. Peralta, *En Banc*].



THE COURT'S RULING

Article III, Section 14(2) of the 1987 Constitution provides that every accused is presumed innocent unless their guilt is proven beyond reasonable doubt. This presumption in favor of the accused remains until the judgment of conviction becomes final and executory.²⁹ Corollary thereto, an appeal in a criminal case opens the whole case for review, with the appellate court charged with the duty to cite and appreciate the errors it may find in the appealed judgment, whether these errors are assigned or unassigned.³⁰

In cases involving dangerous drugs, settled is the rule that the prosecution must establish the following links in the chain of custody: *first*, the seizure and marking 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 by the forensic chemist to the court.³¹ Given the fungible nature of drugs, the likelihood of tampering, loss, mistake, or even evidence planting, is high. Therefore, it is essential that the identity and integrity of the *corpus delicti* be preserved.³² Compliance with the requirements under Section 21, Article II of R.A. 9165 ensures the identity and integrity of the *corpus delicti*.³³ Conversely, non-compliance therewith and failure to justify said non-compliance creates reasonable doubt and entitles the accused to an acquittal.

Furthermore, in the landmark case of *Nisperos v. People*,³⁴ the Court held that in warrantless arrests on account of buy-bust operations, **the required witnesses must be present “at or near” the place of apprehension**, i.e., within the vicinity, in order to comply with the statutory rule that the inventory should be conducted immediately after the seizure and confiscation. The presence of the insulating witnesses would guarantee against planting of evidence and frame up³⁵ and would belie any doubt as to the source, identity, and integrity of the seized drug.³⁶

Here, none of the insulating witnesses were present at the time of the apprehension of the accused nor were they at or near the place where the buy-bust operation was conducted. Based on the testimony of the police officers, the insulating witnesses were only called in after the buy-bust or after the accused were already apprehended. In addition, the insulating witnesses arrived after approximately 30 minutes from the time of apprehension and

²⁹ *Polangcos v. People*, 862 Phil. 764, 777 (2019) [Per J. Caguioa, Second Division].

³⁰ *People v. Kamad*, 624 Phil. 289, 310 (2010) [Per J. Brion, Second Division].

³¹ *Jacson v. People*, 854 Phil. 67, 78 (2019) [Per J. Lazaro-Javier, Second Division].

³² *Mallillin v. People*, 576 Phil. 576, 588 (2008) [Per J. Tinga, Second Division].

³³ *See People v. Valencia*, G.R. No. 250610, July 10, 2023 [Per J. Leonen, Second Division] available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/69153>.

³⁴ G.R. No. 250927, November 29, 2022 [Per J. Rosario, *En Banc*] available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68767>.

³⁵ *See People v. Sagana*, 815 Phil. 356, 373 (2017) [Per J. Leonen, Second Division].

³⁶ *People v. Tomawis*, 830 Phil. 385, 409 (2018) [Per J. Caguioa, Second Division].



after SPO3 Germodo had already allegedly marked the evidence seized from the accused and those recovered on the table inside Rebuton's room.³⁷

Indeed, the absence of the insulating witnesses at the time of apprehension and for approximately 30 minutes thereafter constituted a significant gap in the chain of custody, which casts reasonable doubt as to the identity and integrity of the *corpus delicti*. Moreover, the prosecution did not provide any explanation whatsoever as to the buy-bust team's failure to secure the presence of the insulating witnesses prior to the operation.

To reiterate, establishing every link in the chain of custody is crucial to establish the identity, integrity, and evidentiary value of the *corpus delicti* or the seized illegal drug and/or drug paraphernalia. Failure to demonstrate compliance with just one of the links and failure to provide any justifiable reason for the non-compliance create reasonable doubt that the substance confiscated from the accused is the same substance presented in court.³⁸ Consequently, the accused-appellant is entitled to an acquittal based on reasonable doubt.

In view of the acquittal of the accused-appellant, her Omnibus Motion is hereby denied for having been rendered moot.

Section 11, Rule 122 of the Rules of Criminal Procedure shall apply

Finally, considering that the judgment of the Court is favorable to him, Rebuton shall benefit from the motion for reconsideration filed by Rebutazo, despite his non-participation in the same. Section 11, Rule 122 of the Rules of Criminal Procedure provides:

Section 11. Effect of appeal by any of several accused. — (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, **except insofar as the judgment of the appellate court is favorable and applicable to the latter[.]**³⁹ (Emphasis supplied)

This is more so considering that the *corpus delicti* for the offenses charged against Rebutazo is the same as the *corpus delicti* for the offenses charged against Rebuton. Thus, the gap in the chain of custody likewise casts reasonable doubt on Rebuton's guilt.

FOR THESE REASONS, the Motions for Reconsideration dated April 2, 2018 and March 25, 2018 and the Supplemental Motion for Reconsideration dated April 11, 2018 of accused-appellant are hereby **GRANTED**. The Resolution dated December 13, 2017 is hereby **REVERSED**. The Omnibus Motion for Plea Bargaining and to Hold in

³⁷ TSN, SPO3 Allen June Germodo, January 30, 2013, pp. 21–22 and 24.

³⁸ See *People v. Ubungen*, 836 Phil. 888, 902 (2018) [Per J. Martires, Third Division].

³⁹ RULES OF CRIMINAL PROCEDURE, Rule 122, sec. 11, as amended by A.M. No. 00-5-03-SC, December 1, 2000.



Abeyance the Resolution of Accused-Appellant's Motion for Reconsideration dated June 7, 2018 of the accused-appellant is hereby **DENIED** for being moot.

Accordingly, accused Diosdado Rebuton y Melendez a.k.a. "Dado" and accused-appellant Marilou Rebutazo y Encabo a.k.a. "Loi," are hereby **ACQUITTED** for failure of the prosecution to establish their guilt beyond reasonable doubt, and are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for another cause.

Let a copy of this Resolution be furnished to the Superintendent of the New Bilibid Prison and the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendents are ordered to report to this Court within five days from receipt of this Resolution the action he or she has taken. Copies shall also be furnished to the Director General of the Bureau of Corrections, the Chief of the Philippine National Police, and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of judgment be issued immediately.

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:




AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



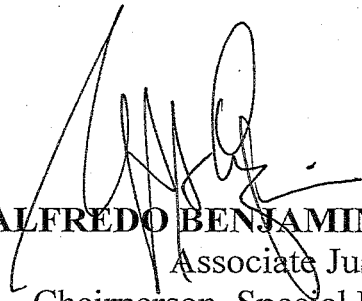
RODIL V. ZALAMEDA
Associate Justice



ANTONIO T. KHO, JR.
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.



ALFREDO BENJAMIN S. CAGUTOA
Associate Justice
Chairperson, Special First Division

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice

