



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 15, 2022 which reads as follows:

“G.R. No. 238242 (*Arlene Evangelista y Pasion v. People of the Philippines*). — Before the Court is a Petition for Review on Certiorari¹ assailing the April 21, 2017 Decision² and February 26, 2018 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07760, which affirmed the conviction of Arlene Pasion Evangelista (Arlene) by the Regional Trial Court for Violation of Section 5,⁴ Article II⁵ of Republic Act (RA) No. 9165.⁶

ANTECEDENTS

Arlene was charged with Illegal Possession of Dangerous Drugs under the following Information:⁷

That on or about the 3rd day of May, 2012, in the Municipality of [San Leonardo], Province of Nueva Ecija, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully[,] and feloniously have in [her] custody and control 0.02 grams and 0.03 grams of “shabu”, a dangerous drug, and sell the same to a poseur-buyer, without having the necessary permit and/or license having been issued to her by the proper government agency, to the damage and prejudice of the Government.

- over – ten (10) pages ...

283-B

¹ *Rollo*, pp. 16-28. Filed under Rule 45 of the Rules of Court.

² *Id.* at 50-70. Penned by Associate Justice Ramon A. Cruz, with concurrence of Associate Justices Marlene Gonzales-Sison and Eduardo B. Peralta, Jr.

³ *Id.* at 6.

⁴ Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

⁵ Unlawful Acts and Penalties

⁶ Entitled “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,” approved on June 7, 2002.

⁷ Docketed as Criminal Case No. 15429-12. *Rollo*, p. 32, 51.

CONTRARY TO LAW.

When arraigned, Arlene entered a plea of not guilty. Trial then ensued.

The prosecution presented the following witnesses: (1) SPO1 Diosdado Ladignon (SPO1 Ladignon), Chief of the Drug Enforcement Unit (DEU); and (2) PO Ritchel de Leon (PO De Leon); and (3) PCI Forensic Chemist Jebie C. Temario (PCI Temario) of the Nueva Ecija PNP Crime Laboratory.

Prior to May 3, 2012, the DEU received reports from barangay officials of Barangay San Anton, San Leonardo, Nueva Ecija about Arlene's alleged involvement in drug peddling activities in the barangay. Acting on the report, the police officers of the San Leonardo Police Station conducted surveillance, which culminated in a successful test-buy of a sachet of *shabu* from Arlene.

On May 3, 2012, Police Chief Renato C. Morales (PC Morales) ordered the conduct of a buy-bust operation. A buy-bust team was formed composed of a backup team led by PO Manuel Pangilinan, SPO1 Ladignon, and PO De Leon as arresting officers, and a police asset as poseur-buyer. PC Morales gave a ₱1,000-bill to SPO1 Ladignon and was marked by SPO1 Labignon with the letter "X" placed on the forehead of the image of Jose Abad Santos. SPO1 Ladignon also coordinated with the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG).⁸

Around 10:00 a.m. of the same day, SPO1 Ladignon prepared the vehicle, handed the marked money to the police asset, and proceeded to the target area with the police asset and the buy-bust team. SPO1 Ladignon and PO de Leon posted themselves about ten (10) meters away from where the poseur-buyer was standing. Ten (10) minutes later, Arlene arrived on board a motorized tricycle. Within full view of the police officers, the poseur-buyer gave the marked money to Arlene, who supplied two (2) plastic sachets of suspected *shabu* to the poseur-buyer. PO De Leon immediately ran towards Arlene, arrested her, and recovered the marked money. Meanwhile, SPO1 Ladignon retrieved the two (2) plastic sachets from the poseur-buyer, and marked the items with "AEP" and "AEP-1." The marking was witnessed by Arlene and the barangay officials of San Anton.⁹

- over -

283-B

⁸ Coordination Form dated May 3, 2012 with Control Number: PAIDSOTG 05-03-02. Id. at 53.

⁹ Id.

The team went back to the San Leonardo Police Station where they turned over Arlene and the seized items to Police Investigator Giovanni Peñamante (PI Peñamante), who conducted an inventory of the confiscated drugs. The inventory was made in the presence of SPO1 Ladignon, PO De Leon, media man Cris Yambot, Barangay Councilor Roderick Abergas, and Reggie Farmer, an employee of the Municipal Trial Court of San Leonardo. All witnesses signed the Receipt of Property Seized dated May 3, 2012. Photographs were also taken while the inventory was being conducted. Afterwards, SPO1 Ladignon delivered seized items with the letter request for drug examination to the Nueva Ecija PNP Crime Laboratory, where the items were received by PCI Temario. After examination, PCI Temario issued her findings in Chemistry Report No. D-0902012 dated May 3, 2012, stating that the two (2) heat-sealed transparent plastic sachets containing white crystalline substance and marked with “AEP” - weighing 0.03 gram and “AEP-1” - weighing 0.02 gram, both tested positive for Methamphetamine Hydrochloride, a dangerous drug.¹⁰

For the defense, Arlene, and her cousin – Jay-ar Evangelista (Jay-Ar) testified. Arlene denied the charge against her and claimed that, on May 3, 2012, she was driving a tricycle in Barangay San Anton, San Leonardo, Nueva Ecija when PO Pangilinan and other police officers flagged her down, suddenly handcuffed her, and ordered her to board the police car. They proceeded to the house of her aunt, Edilberta Paynor (Edilberta) where Arlene also lived. Upon their arrival, the police officers searched the house despite the objection of Arlene’s aunt and uncle. Thereafter, the police officers brought Arlene to the police station. At the station, Arlene saw a cigarette pack containing two (2) plastic sachets and a ₱1,000-bill. She protested that she had nothing to do with those items. Finally, Arlene testified that the case against her was made up and was prompted by politics because she was always seen in the company of her uncle, who was a former barangay captain and the political opponent of the incumbent barangay chairperson of San Anton.¹¹

To corroborate Arlene’s statements, Jay-Ar testified that, on May 3, 2012, he noticed a commotion outside the house of Edilberta. He saw police officers and heard Edilberta shouting and asking the police what they wanted from her. The police demanded Edilberta to produce the *shabu* in her possession to avoid trouble and embarrassment with their neighbors. The police officers then entered and searched the house.¹²

- over -

283-B

¹⁰ Id. at 53- 54.

¹¹ Id. at 56

¹² Id. at 57-58.

In a Decision¹³ dated June 16, 2015, the RTC found Evangelista guilty as charged and sentenced her as follows:

WHEREFORE, premises considered, the court finds the accused Arlene Evangelista [y] Pasion GUILTY beyond reasonable doubt for the crime of illegal sale of *shabu* or Violation of Section 5, Article II of the Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby imposes upon her the penalty of life imprisonment.

FURTHER, the accused is hereby ORDERED to pay a fine in the amount of [P]500,000.00 and the costs of suit.

SO ORDERED.

The RTC found that the testimonial, documentary, and object evidence of the prosecution are credible and sufficient to establish the elements of illegal possession of dangerous drugs. The prosecution witnesses detailed the sale transaction between Arlene and the poseur-buyer, as well as, established the identity of the *corpus delicti*. Aggrieved, Arlene filed a Motion for Reconsideration, which the RTC denied in an Order dated August 6, 2015.

On appeal, the CA, in a Decision dated April 21, 2017, affirmed the RTC ruling. The CA proclaimed that the defense failed to destroy the credibility of SPO1 Ladignon and PO de Leon even if there were minor discrepancies in their testimonies. They consistently identified Arlene as the one who sold illegal drugs to the poseur-buyer, as well as gave details as to who arrested Arlene and who retrieved the marked money. Further, Arlene failed to establish any ill-motive on the part of the police officers nor any connection between the incumbent barangay captain and the arresting police officers. Lastly, the CA held that the chain of custody of the seized drugs was proven by the prosecution. Hence, this petition.

The sole issue in this petition is whether the CA erred in affirming the conviction of Arlene for Illegal Sale of Dangerous Drugs.

RULING

The petition is meritorious.

- over -

283-B

¹³ Id. at 32-47.

We acquit Arlene on the ground that the prosecution failed to prove, *first*, the illegal sale of the dangerous drug between her and the poseur-buyer, and *second*, the unbroken chain of custody over the alleged seized drug from Arlene.

For an accused to be convicted for the illegal sale of dangerous drugs, the following elements must concur: (1) that the sale or transaction took place between the accused and the poseur-buyer, and (2) that the dangerous drug subject of the sale or transaction is presented in court as evidence of the *corpus delicti*.¹⁴

Foremost is the failure of the prosecution to prove the first element. Notably, the poseur-buyer, in this case, was a police asset, who was not a police officer and was not presented as a witness. Only the testimonies of SPO1 Ladignon and PO De Leon were offered to prove that a sale transaction took place. However, their testimony cannot be considered as eyewitness accounts of the illegal sale since neither of them actually saw the exchange between the poseur-buyer and Arlene. To recall, SPO1 Ladignon and PO De Leon positioned themselves about ten (10) meters away from where the poseur-buyer stood and waited for Arlene. They were not able to witness that an actual exchange or sale took place between the poseur-buyer and Arlene. To be sure, the non-presentation of the poseur-buyer was fatal to the prosecution's cause as nobody could competently testify on the fact of sale.¹⁵

In *People v. del Rosario*,¹⁶ the Court held that the failure of the prosecution to present the alleged buyer of the illegal drug was fatal because, without the testimony of the poseur-buyer, there is no convincing evidence to show that accused sold illegal drugs. The testimonies of the buy-bust team are hearsay since no eyewitness privy to the sale transaction was presented at the trial. In several other cases,¹⁷ we reversed the conviction of the accused because of the failure of the prosecution to present the poseur-buyer during the trial to describe how the transaction between him and the accused took place. In these cases, none of the police officers witnessed the transaction between the accused and the poseur-buyer since they were positioned at a distance during the supposed transaction.

- over -

283-B

¹⁴ *People v. Andaya y Reano*, 745 Phil. 237, 246 (2014).

¹⁵ See *People v. Cabrillos*, G.R. No. 247657 (Notice), June 8, 2020.

¹⁶ *People v. Del Rosario*, 304 Phil. 418, 424-425 (1994). See also *People v. Amin*, 803 Phil. 557, 563 (2017).

¹⁷ *People v. Cabrillos*, G.R. No. 247657 (Notice), June 8, 2020; *People v. Suating*, G.R. No. 220142, January 29, 2020; *People v. Andaya*, 745 Phil. 237, 247-248 (2014).

Proof of the sale transaction must be credible and complete.¹⁸ While the non-presentation of a confidential informant/poseur-buyer as a witness does not ordinarily weaken the State's case against the accused, if the arresting officers relied only on the pre-arranged signal from the confidential informant who acted as the poseur-buyer, his non-presentation must be credibly explained and the transaction established by other ways in order to satisfy the quantum of proof because the arresting officers did not participate in the buy-bust transaction with the accused.¹⁹ Here, without the police officers' active involvement in the sale transaction, considering that SPO1 Ladignon and PO De Leon were ten (10) meters away from the poseur-buyer and Arlene at the time of the sale, it is only through the testimony of the poseur-buyer that the State can credibly incriminate Arlene. In *People v. Conlu*²⁰ and *Sindac v. People*,²¹ we ruled that non-presentation of the poseur-buyer weakened the evidence of the prosecution. In both cases, the police officers stayed about ten (10) meters away from where the transaction with the accused was made by the poseur-buyer. The distance made it difficult for the police, the supposed eyewitnesses, to see and hear what exactly was happening between the accused and the poseur-buyer. The police officers were not privy to and had no personal knowledge of the conversation of the poseur-buyer and the accused, and were merely aroused into suspicion that the accused had just committed, was committing, or was about to commit a crime. A sweeping statement that the police officers saw the exchange of the buy-bust money and the seized drugs between the poseur-buyer and the accused cannot suffice. It is the poseur-buyer's testimony, if presented, that could have established that the sale occurred since he was the one who participated and personally witnessed the sale. Similar to this case, the failure to present the poseur-buyer to positively identify Arlene as the seller of prohibited drugs constitutes a lack of proof of the first element of the offense - that the sale or transaction took place between the accused and the poseur-buyer.

Moreover, the chain of custody over the seized dangerous drugs was broken. Section 21, Article II of RA No. 9165 outlines the post-seizure procedure to be observed by the apprehending officers for the custody and disposition of the seized drug. The alleged crime, in this

- over -

283-B

¹⁸ *People v. Amin*, *supra* note 16 at 564; citing *People v. Andaya*, 745 Phil. 237, 247-248 (2014).

¹⁹ *People v. Andaya*, *supra*.

²⁰ G.R. No. 225213, October 3, 2018.

²¹ 794 Phil. 421, 436 (2016).

case, happened on February 2, 2006, or before the enactment of the amendatory law.²² Hence, the original provision of RA No. 9165 applies, to wit:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x.

The prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: *first*, the confiscation and marking of the specimen seized from the accused by the apprehending officer; *second*, the turnover of the seized item by the apprehending officer to the investigating officer; *third*, the investigating officer's turnover of the specimen to the forensic chemist for examination; and *fourth*, the submission of the item by the forensic chemist to the court.²³ Here, records reveal several gaps in the chain of custody.

The initial link in the chain of custody is the marking of the confiscated illicit drugs. Marking precludes any contamination, switching, or planting of evidence. Through marking, the evidence is separated from the *corpus* of other similar and correlated evidence,

- over -

283-B

²² See 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. RA No. 10640 states that it shall "take effect fifteen days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2014 in the respective issues of "*The Philippine Star*" (Vol. XXVIII, No. 359, *Philippine Star Metro* section, p. 21) and the "*Manila Bulletin*" (Vol. 499, No. 23, *World News* section, p. 6). Hence, RA No. 10640 became effective on August 7, 2014, or before the commission of the crime on February 2, 2006.

²³ *People v. Bugtong*, 826 Phil. 628, 638-639 (2018); *People v. Enad*, 780 Phil. 346, 358 (2016).

starting from confiscation until its disposal at the close of criminal proceedings.²⁴ To be at par with the rule on the chain of custody, the marking of the confiscated articles should be undertaken in the presence of the accused, and immediately upon seizure, which effectively guarantees that the articles seized are the same items that enter the chain and are eventually the ones offered in evidence.²⁵

In this case, SPO1 Ladignon and PO de Leon gave inconsistent statements as to the place where the markings were made. SPO1 Ladignon claimed that it was done at the place of arrest, while PO De Leon stated that it was done at the San Leonardo Police Station. The clashing accounts of SPO1 Ladignon and PO De Leon create suspicion as to the identity and integrity of the seized items. In *People v. Sabdula*,²⁶ we ruled that while the plastic sachet already bore markings when it was delivered for examination to the forensic chemist, “in the absence, however, of specifics on how, when and where the marking was done and who witnessed the marking procedure, we cannot accept this marking as compliance with the required chain of custody requirement.”

Also, the requirement of having the three (3) required witnesses to be physically present at the time of inventory was not complied with. There were only two (2) witnesses present during the inventory, namely: barangay councilor Roderick Abergas and media representative Cris Yambao. There was no representative from the DOJ. The prosecution failed to proffer a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses. The prosecution bears the positive duty to initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence.²⁷ Specifically, it must be alleged and proved that the presence of the three (3) witnesses at the physical inventory and photograph of the illegal drug seized was not

- over -

283-B

²⁴ *People v. Ismael*, 806 Phil. 21, 31 (2017).

²⁵ *People v. Sanchez*, 590 Phil. 214, 241 (2008).

²⁶ 733 Phil. 85, 96 (2014).

²⁷ *People v. Padua*, G.R. No. 239781, February 5, 2020, citing *People v. Sipin*, 833 Phil. 67, 92 (2018).

obtained on the ground of just and valid circumstances,²⁸ and earnest effort to secure the attendance of the necessary witnesses must be proven.²⁹ Here, there was not even an attempt to explain the absence of a representative from the DOJ. While an employee of the MTC of San Leonardo was in attendance, he cannot serve as a substitute for a DOJ representative as provided under Section 21 of RA No. 9165.

Thereafter, from the time of arrest and seizure and during transit from Edilberta's house to the San Leonardo Police Station, it is unclear as to who had custody of the confiscated drugs. The records lack details pertaining to the handling of the seized items and whether the apprehending team undertook precautionary measures to ensure the integrity and identity of the drugs. Without these material details, compliance by the buy-bust team with the chain of custody requirements becomes suspicious.³⁰ The same applies to the second and third link in the chain of custody, referring to the turnover by the apprehending officer to the investigating officer, and the turnover by the investigating officer to the forensic chemist. While the seized items were turned over to PI Peñamante at the police station, he was not presented as a witness to testify on the steps he took to preserve the identity and integrity of the seized drugs while they were in his custody. Verily, the dearth of evidence on the handling and preservation of the drugs by the apprehending officer and the investigating officer is another fatal defect in an already broken chain of custody.

We stress that the prosecution has the burden of proving compliance with Section 21 of RA No. 9165 and providing a sufficient explanation in case of non-compliance. Breaches of the procedure outlined in Section 21 committed by police officers, if left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.³¹

- over -

283-B

²⁸ Id. The following are the reasons to justify the absence of any of the necessary insulating witnesses: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by immediate retaliatory action of the accused or any persons acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the antidrug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

²⁹ Id.

³⁰ *People v. Que*, 824 Phil. 882, 896 (2018).

³¹ *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018; citing *People v. Sumili*, 753 Phil. 342, 352 (2015).

FOR THE STATED REASONS, the petition is **GRANTED**. Arlene Evangelista y Pasion is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt, and is ordered immediately **RELEASED** from detention unless confined for any other lawful cause. Let an entry of final judgment be issued immediately.

We **ORDER** the Director General of the Bureau of Corrections, Muntinlupa City, to: (a) cause the immediate release of Arlene Evangelista y Pasion, unless she is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *fn 4/2*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
283-B

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