



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 14 February 2022 which reads as follows:

“G.R. No. 249649 (*People of the Philippines v. Leodegario Bantilan y Martinez*). — This is an appeal¹ assailing the June 21, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01909-MIN, which affirmed the January 30, 2018 Decision³ of the Regional Trial Court (RTC) of Dipolog City, Branch 9, finding accused-appellant Leodegario Bantilan y Martinez (accused-appellant) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Antecedents:

In two separate Informations,⁵ accused-appellant was charged with Illegal Sale and Illegal Possession of Dangerous Drugs, as follows:

Criminal Case No. 14986

That on January 4, 2008 at 2:40 in the afternoon, more or less[,] at Relocation Site, Laoy, Olingan, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that unauthorized sale and distribution of dangerous drug is punishable by law and without legal authority to sell the same, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to a poseur buyer one (1) big transparent plastic sachet of Methamphetamine Hydrochloride, more

¹ *Rollo*, pp. 23-25.

² *Id.* at 5-22. Penned by Associate Justice Loida S. Posadas-Kahulugan and concurred in by Associate Justices Walter S. Ong and Florencio M. Mamauag, Jr.

³ *CA rollo*, pp. 44-53. Penned by Judge Victoriano D. Lacaya, Jr.

⁴ 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: June 7, 2002.

⁵ Records (Criminal Case No. 14986), pp. 1-2; records (Criminal Case No. 14994), pp. 1-2.

popularly known as “Shabu[,]” approximately weighing 0.2967 gram, after having received marked money as payment therefor[] and recovered from his possession cash money amounting to Three Thousand Four Hundred Fifty Pesos (P3,450.00) only, which included one (1) piece Two hundred peso bill bearing Serial No. DD155084 and one (1) piece Five Hundred peso bill bearing Serial No. LJ559948 used as marked money, as proceeds of his illegal trade[,] said act having been committed in gross violation of the above cited law.

CONTRARY TO LAW.⁶

Criminal Case No. 14994

That on January 4, 2008 at 2:40 in the afternoon, more or less[,] at Relocation Site, Laoy, Olingan, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that unauthorized possession and control of dangerous drug is punishable by law, did then and there willfully, unlawfully and feloniously have in his possession and control fifteen (15) pieces small transparent plastic sachet of methamphetamine hydrochloride, more popularly known as “Shabu[,]” approximately weighing a total of 1.15886 grams, without legal authority to possess the same, in gross violation of Section 11, Par. 3, Article II of R.A. 9165.

CONTRARY TO LAW.⁷

Accused-appellant pleaded not guilty during arraignment.⁸ Trial on the merits ensued thereafter.⁹

Evidence for the Prosecution:

The prosecution presented four police officers as witnesses:

Police Officer (PO) 2 Rey Pactol Vertudes (PO2 Vertudes) testified that on January 4, 2008, at around 2:40 p.m., the Dipolog City Police Station received a tip that a certain “Leo” of Laoy, Olingan, Dipolog City was engaged in selling shabu.¹⁰ A buy-bust operation was accordingly planned and coordinated with the Philippine Drug Enforcement Agency.¹¹ PO2 Vertudes, Senior Police Officer (SPO) 1 Zotico Calago Jr. (SPO1 Calago Jr.), PO1 Johnny Dinopol Condinato (PO1 Condinato), and their confidential informant (CI), proceeded to the crime scene aboard a Pajero to conduct a surveillance.¹² From a 10-meter distance, they saw accused-appellant play a card game with two persons and later on converse with a known drug user in the area.¹³ The team then ordered their CI to buy *shabu* using the marked money.¹⁴

⁶ Records (Criminal Case No. 14986), pp. 1-2.

⁷ Records (Criminal Case No. 14994), pp. 1-2.

⁸ CA rollo, p. 45.

⁹ Id.

¹⁰ TSN, September 16, 2008, p. 3.

¹¹ Id.

¹² Id. at 6-7.

¹³ Id.

¹⁴ Id. at 7.

After disembarking from the vehicle, the CI boarded his own motorcycle and approached accused-appellant.¹⁵ There was a gesture of exchange, with the CI giving money to accused-appellant and the latter handing something to the CI.¹⁶ The CI then sped away and flicked his light to signal the end of the transaction.¹⁷

Upon receiving the signal, PO2 Vertudes called their superior to request for the presence of witnesses.¹⁸ The team approached accused-appellant and arrested him.¹⁹ They brought him to the vehicle while they waited for the witnesses.²⁰

After less than 10 minutes, media representative Zorayda Musaril, Department of Justice representative Publio Alesna, and barangay captain Cabalo arrived.²¹ In their presence and that of accused-appellant, PO1 Condinato conducted a body search and recovered 15 sachets,²² along with some money.²³ The team then conducted the inventory at the hood of the vehicle,²⁴ with the receipt signed by all the three witnesses, and the event photographed by PO1 Condinato.²⁵ According to PO2 Vertudes, at around that time, PO1 Condinato retrieved from the CI, who was at the next block, the sachet sold to him by the accused-appellant.²⁶ PO2 Vertudes marked the items upon receiving them from PO1 Condinato.²⁷

SPO1 Calago Jr. corroborated PO2 Vertudes' narration of what happened on the day of the incident.²⁸ He added that he served as the custodian of the confiscated items and, together with PO2 Vertudes, turned them over to the crime laboratory the following day.²⁹

PO 2 Michael Angcon (PO2 Angcon) testified that he received the confiscated sachets from PO2 Vertudes on January 5, 2008.³⁰ He turned them over to Police Inspector (P/Insp.) Mark Christian Maceda (P/Insp. Maceda) on the same day.³¹

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 8.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 8, 9.

²² In the TSN, PO2 Vertudes initially said that there were 14 sachets, but he identified 15 sachets later.

²³ TSN, September 16, 2008, pp. 8-9.

²⁴ Id. at 9.

²⁵ Id. at 9-10.

²⁶ Id. at 10-11.

²⁷ Id. at 11.

²⁸ TSN, January 13, 2012, pp. 4-20.

²⁹ Id. at 17-20.

³⁰ TSN, August 19, 2011, pp. 3-4.

³¹ Id. at 7-8.

Finally, P/Insp. Maceda, a forensic chemist, testified that after due testing, the contents of the sachets came out positive for methamphetamine hydrochloride or *shabu*.³²

Notably, the CI, who acted as the poseur-buyer, and PO1 Condinato, who supposedly took the buy-bust item from the CI, and who gave it to PO2 Vertudes for marking, did not testify.

Evidence for the Defense:

The defense presented three witnesses: (1) accused-appellant himself;³³ (2) his father Crisostomo Bantilan (Crisostomo);³⁴ and (3) Marvin Malik (Malik), a vendor who witnessed the incident.³⁵

Accused-appellant testified that at around 2:40 p.m. on January 4, 2008, while playing cards at the area, three unknown persons arrived and ordered him to strip down.³⁶ The men frisked him and confiscated his money amounting to ₱43,000.00, which was the proceeds he received from the earlier sale of a parcel of land owned by his father (as evidenced by a Deed of Sale).³⁷ Accused-appellant was later brought to the house of the barangay captain and falsely accused of selling drugs.³⁸

Crisostomo corroborated his son's testimony regarding the sale and explained that he indeed gave the proceeds to his son as the latter had plans to go abroad.³⁹

Malik, a peddler who was also at the area that time, testified that when accused-appellant was accosted by the unknown men, he saw them take money from him but did not see any *shabu* recovered from the latter.⁴⁰

Ruling of the Regional Trial Court:

The RTC found accused-appellant guilty of the offenses charged, *viz.*:

WHEREFORE, the prosecution having established to a moral certainty the guilt of Leodegario Bantilan y Martinez, [t]his Court hereby renders judgment as follows:

1. In Criminal Case No. 14994 for Violation of Section 11, Par. 3, Article II of R.A. 9165, this Court hereby sentences Leodegario Bantilan to a prison term of twelve (12) years and eight (8) months, as minimum, to seventeen (17) years

³² TSN, June 4, 2008, pp. 4-9.

³³ TSN, March 22, 2016, pp. 1-16.

³⁴ TSN, September 26, 2017, pp. 1-7.

³⁵ TSN, September 4, 2015, pp. 1-12.

³⁶ TSN, March 22, 2016, p. 3.

³⁷ *Id.* at 3-4, 10.

³⁸ *Id.* at 3-4.

³⁹ TSN, September 26, 2017, pp. 3-5.

⁴⁰ TSN, September 4, 2015, pp. 3-5.

and eight (8) months and to pay a fine of three hundred thousand pesos (P300,000.00) and

2. In Criminal Case No. 14986 for Violation of Sec. 5, Art. II of R.A. 9165, this court hereby sentences said Leodegario Bantilan to **LIFE IMPRISONMENT**, and to pay the fine of five hundred thousand pesos (P500,000.00).

Subject drug in both cases are declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.⁴¹

The RTC held that all the elements of Illegal Sale and Possession of Dangerous Drugs had been adequately established by the prosecution;⁴² that the integrity and evidentiary value of the confiscated items had been preserved as shown by the marking of the items in the crime scene, by the inventory in the presence of the required witnesses, and by the keeping of evidence by SPO1 Calago Jr.,⁴³ and that accused-appellant's failure to charge the policemen with frame-up could only be regarded as proof of his tacit admission to the offenses.⁴⁴

Thus, accused-appellant's appeal⁴⁵ before the CA, assigning the following errors:

I

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE A BROKEN CHAIN IN THE CUSTODY OF THE *CORPUS DELICTI*.

II

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE ELEMENTS OF ILLEGAL SALE OF DANGEROUS DRUG.⁴⁶

Accused-appellant argued that there were broken links in the chain of custody since key persons who handled the confiscated items failed to testify, namely the poseur-buyer,⁴⁷ PO1 Condinato,⁴⁸ and the evidence custodian in the crime laboratory.⁴⁹ Because of such missing links, the prosecution failed to overcome the presumption of innocence in favor of accused-appellant.⁵⁰

In response, the Office of the Solicitor General (OSG) argued that the non-presentation of the CI was not fatal since SPO1 Calago Jr. and PO2 Vertudes

⁴¹ CA *rollo*, pp. 52-53.

⁴² Id. at 49-50.

⁴³ Id. at 50-52.

⁴⁴ Id. at 52.

⁴⁵ Records (Criminal Case No. 14994), p. 116.

⁴⁶ CA *rollo*, p. 36.

⁴⁷ Id. at 37-38.

⁴⁸ Id. at 38-39.

⁴⁹ Id. at 39-40.

⁵⁰ Id. at 40.

both testified that they witnessed the transaction and that they saw PO1 Condinato conduct a body search and recover the 15 plastic sachets;⁵¹ that P/Insp. Maceda's testimony that the sachets marked during trial were the very same ones he subjected to laboratory examination sufficed to establish the fourth link in the chain of custody;⁵² and that accused-appellant failed to impute any ill motive on the police officers, tilting the balance in favor of the prosecution.⁵³

Ruling of the Court of Appeals:

The CA affirmed accused-appellant's conviction, *viz.*:

WHEREFORE, premises considered, the appeal is hereby **DENIED**.

The Judgment dated 30 January 2018 promulgated by the Regional Trial Court, Branch 9 of Dipolog City in Criminal Case No. 14994 and Criminal Case No. 14986 for Violation of Section 5 and Section 11 of R.A. 9165 is **AFFIRMED**.

SO ORDERED.⁵⁴

The CA held that the integrity of the subject drugs had been preserved;⁵⁵ that the elements of Illegal Sale and Illegal Possession of Drugs had been established by the prosecution;⁵⁶ that the presentation of the CI was not indispensable;⁵⁷ and that accused-appellant failed to present evidence to overcome the presumption of regularity in official duty.⁵⁸

Thus, this appeal.⁵⁹

Accused-appellant filed a Supplemental Brief⁶⁰ where he reiterated his arguments before the CA.⁶¹ The OSG Plaintiff-appellee, on the other hand, no longer filed a Supplemental Brief and just adopted the one it filed before the CA.⁶²

Issue

Did the CA err in sustaining the conviction of accused-appellant?

⁵¹ Id. at 70-74.

⁵² Id. at 75.

⁵³ Id. at 77-78.

⁵⁴ *Rollo*, pp. 20-21.

⁵⁵ Id. at 12.

⁵⁶ Id. at 14-18.

⁵⁷ Id. at 19-20.

⁵⁸ Id. at 20.

⁵⁹ Id. at 23-25.

⁶⁰ Id. at 31-37.

⁶¹ Id.

⁶² Id. at 43-47.

Our Ruling

The appeal is meritorious.

The prosecution failed to establish that the alleged sale actually took place.

To secure a conviction for Illegal Sale of Dangerous Drugs, the following elements must be established: (1) the transaction or sale took place between the accused and the poseur-buyer; and (2) the dangerous drug subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.⁶³

Here, the prosecution failed to establish the first element, *i.e.*, the transaction actually took place. Its failure to present the poseur-buyer or the CI—the only person apart from accused-appellant who had personal knowledge of the transaction—is fatal to its case.

Ordinarily, the non-presentation of the CI as a witness does not weaken the State's case against the accused.⁶⁴ However, this is not the case when no police officer actually participated in the buy-bust transaction; if the arrest is based on the pre-arranged signal from the CI who at the same time acted as the poseur-buyer, the CI's non-presentation must be credibly explained and the transaction established by other ways.⁶⁵ The reason is that in illegal drugs cases, proof of transaction must always be credible and complete.⁶⁶ Thus, in *People v. Cabrillos*,⁶⁷ the Court acquitted the accused when the CI who acted as the poseur-buyer was not presented during trial and only the police officers who observed the transaction from afar testified.⁶⁸ The Court noted that the seven-meter distance was not enough for the police officers to see and hear what exactly transpired between the CI and the accused:

The first element of the crime involving the Sale of Illegal Drugs — that the transaction or sale took place — was not sufficiently proven by the prosecution. **The non-presentation of the poseur-buyer was fatal to the prosecution as nobody could competently testify on the fact of sale between accused-appellant and the poseur-buyer.**

Be it stressed that in this case, the poseur-buyer and the confidential informant is one and the same. The poseur-buyer/confidential agent did not testify...

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⁶³ *People v. Cabrillos*, G.R. No. 247657, June 8, 2020, citing *People v. Conlu*, G.R. No. 225213, October 3, 2018.

⁶⁴ *Id.*, citing *People v. Andaya*, 745 Phil. 237, 240 (2014).

⁶⁵ *Id.*

⁶⁶ *Id.*, citing *People v. Andaya*, 745 Phil. 237, 249 (2014).

⁶⁷ *Id.*

⁶⁸ *Id.*

In this case, the seven-meter distance between the police officers waiting for the pre-arranged signal from the *poseur*-buyer and the accused-appellant made it difficult for the police officers, the supposed eyewitnesses, to see and to hear what exactly was happening between accused-appellant and the *poseur*-buyer. None of the police officers were privy to their conversation. The police officers had no personal knowledge of what transpired between accused-appellant and the *poseur*-buyer. The police officers merely made a sweeping statement that they saw the exchange of the buy-bust money and the seized drugs between accused-appellant and the *poseur*-buyer considering that there was nothing that obstructed their view. What was clearly agreed upon was the pre-arranged signal, such that after the *poseur*-buyer scratched his head, the police officers rushed to arrest accused-appellant. The police officers merely relied on the pre-arranged signal to signify that the transaction was consummated. **The non-presentation of the *poseur*-buyer was fatal to the prosecution's cause to prove the fact of the illegal transaction. His testimony would have clearly established that the illegal transaction indeed took place. More so, in this case, the *poseur*-buyer was not familiar with accused-appellant, according to PO3 Lasque.⁶⁹ (Citations omitted, emphasis supplied)**

In the same way, the police officers here who testified had no personal knowledge of the transaction; they merely saw a gesture of exchange from a 10-meter distance.⁷⁰ In the absence of evidence that what really occurred was a sale, accused-appellant cannot be convicted of Illegal Sale of Dangerous Drugs.

The prosecution also failed to prove the identity of the dangerous drug.

In both Illegal Sale and Illegal Possession of Dangerous Drugs, the drug itself constitutes the *corpus delicti* of the offenses. The prosecution is thus tasked to establish through an unbroken chain of custody that the substance illegally sold or possessed by the accused is the same substance that was presented in court.⁷¹ To prove an unbroken chain, the prosecution must account for all of its links, which are:

[F]irst, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer; *second*, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.⁷²

Here, there are unexplained missing links in the chain of custody that severely weaken the prosecution's case for both offenses.

⁶⁹ *Id.*

⁷⁰ See TSN, September 16, 2008, pp. 6-7.

⁷¹ *Izon v. People*, G.R. No. 222509, March 3, 2021, citing *People v. Galisim*, G.R. No. 231305, September 11, 2019.

⁷² *Id.*

First, it was not established how the buy-bust item was handled after it was received by the CI and before it was given to PO2 Vertudes considering that both the CI and PO1 Condinato failed to testify in court. Contrary to plaintiff-appellee's view, PO2 Vertudes' testimony is not enough to establish the identity of the buy-bust item during the transfers from the accused-appellant to the CI, and from the CI to PO1 Condinato, because PO2 Vertudes has no personal knowledge thereof; he was nowhere near enough the accused-appellant and the CI during the alleged sale to clearly see the item, and he also did not witness the transfer from the CI to PO1 Condinato, which happened a block away from the crime scene.⁷³ Neither did the CI nor PO1 Condinato mark the sachet. There is therefore no certainty that the sachet purportedly sold by the accused-appellant to the CI is the same sachet that was given by the CI to PO1 Condinato, and in turn given by the latter to PO2 Vertudes for marking.

Second, it was not established how the confiscated items were brought and turned over to the trial court. P/Insp. Maceda merely said that after due testing, the contents of the sachets came out positive for methamphetamine hydrochloride,⁷⁴ but he failed to testify on what happened after the testing. As explained in *People v. Casilang*⁷⁵ (where the accused was acquitted after the prosecution failed to present, among others, evidence showing how the illegal drug was handled, stored, and safeguarded before submission to the RTC),⁷⁶ the failure of key persons to testify on what happened after the testing casts doubt on the identity of the *corpus delicti* and negates the presumption of regularity in the officers' performance of their duties.⁷⁷

Neither did the prosecution show that the integrity and evidentiary value of the seized illegal drugs had been preserved during the above-mentioned transfers. While it is true that not all persons who came into contact with the seized illegal drugs are required to testify in court,⁷⁸ it must still be shown that the integrity and evidentiary value of the seized illegal drugs had been maintained.⁷⁹ Here, there were simply no adequate safeguards put in place to ensure the integrity and evidentiary value of the confiscated items during the said transfers.

To make matters worse for the prosecution, the defense presented a witness who was present during the frisking and who testified that he did not see any sachet recovered from accused-appellant.⁸⁰ Such testimony only magnifies the doubt created by the unexplained gaps in the chain of custody and, when considered with the failure of the prosecution to establish the nature of the transaction, compel the Court to rule for the acquittal of accused-appellant.

⁷³ See TSN, September 16, 2008, pp. 10-11.

⁷⁴ TSN, June 4, 2008, pp. 4-9.

⁷⁵ G.R. No. 242159, February 5, 2020.

⁷⁶ Id.

⁷⁷ Id., citing *People v. Obmiranis*, 594 Phil. 561, 577 (2008).

⁷⁸ *People v. Reyes*, G.R. No. 242021, January 11, 2021, citing *People v. Galicia*, 826 Phil. 119, 140 (2018).

⁷⁹ Id.

⁸⁰ See TSN, September 4, 2015, pp. 3-5.

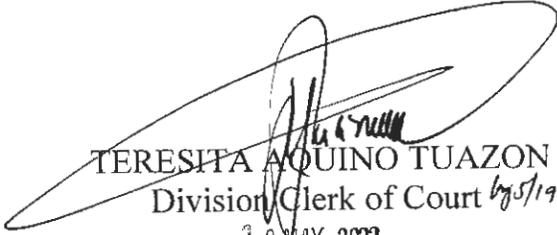
In fine, the CA erred in affirming the conviction of accused-appellant. He must therefore now be acquitted.

WHEREFORE, the appeal is **GRANTED**. The June 21, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01909-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant **LEODEGARIO BANTILAN y MARTINEZ** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless confined for any other lawful cause. The Director General of the Bureau of Corrections, Muntinlupa City, is **DIRECTED** to inform this Court of the action taken hereon within five days from receipt.

Let entry of judgment be issued immediately.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *6/8/19*
9 MAY 2022

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HON. PRESIDING JUDGE (reg)
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