



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. 252490 – (People of the Philippines v. Jayson Narag y Abana @ “Pete”)

We acquit.

Appellant Jayson Narag y Abana was charged with Illegal Possession and Illegal Sale of Dangerous Drugs allegedly committed on July 14, 2017. Thus, Republic Act No. 9165 (RA 9165),¹ as amended by Republic Act No. 10640 (RA 10640)² which took effect on August 7, 2014, governs the disposition of this case.

In drug related cases, the State bears the burden not only of proving the elements of the offense, but also the *corpus delicti* itself. The dangerous drugs and drug paraphernalia seized from appellant constitutes such *corpus delicti*. The prosecution is, therefore, tasked to establish that the substance illegally sold or possessed by the accused is the same substance presented in court.³ This is the chain of custody rule. The rule came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.⁴

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¹ Otherwise known as the Comprehensive Dangerous Drugs Act of 2002

² 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.”

³ *People v. Galisim y Garcia*, G.R. No. 231305, September 11, 2019.

⁴ *Jacson v. People*, G.R. No. 199644, June 19, 2019.

The chain of custody refers to the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized items shall include the identity and signature of the person who held temporary custody thereof, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.⁵ The prosecution, therefore, must establish the following links in the chain of custody:

First, the seizure and marking, if practicable, 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 from the forensic chemist to the court.⁶

We focus on the *first* and *second links* in the chain of custody.

The **first link** refers to the seizure and marking which must be done immediately at the place of the arrest. Too, it includes the physical inventory and taking of photograph of the seized drug which should be done in the presence of the accused or his/her representative or counsel, together with an elected public official and a representative of the Department of Justice (DOJ) or the media.

The marking of the seized items operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence.⁷

Here, Police Officer 3 Randy P. Beran (PO3 Beran) marked the sachet of drugs subject of the illegal sale as "RPB 07-14-17", and Police Officer 1 Perfecto Maribbay (PO1 Maribbay), the additional

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⁵ See *Tumabini v. People*, G.R. No. 224495, February 19, 2020.

⁶ See *People v. Gayoso*, 808 Phil. 19, 31 (2017).

⁷ *People v. Siapno*, G. R. No. 218395, November 3, 2020, citing *People v. Lumaya*, G.R. No.231983, March 7, 2018, 858 SCRA 114.

sachet recovered from appellant during arrest as “PSM 07-14-17”. But the purpose of the marking requirement was put to naught when prior to such marking, these two (2) sachets were commingled together on top of the police mobile. As such, it could no longer be identified which of the two (2) sachets was the subject of the illegal sale, and which one was recovered from appellant’s pocket during the arrest. Too, the unmarked sachets of drugs had become susceptible to alteration, substitution, or tampering. Their integrity and identity, therefore, had been compromised early on.

In *People v. Tampan*,⁸ the Court acquitted Tampan for failure of the police officers, without justification, to faithfully comply with the chain of custody rule, including the marking requirement. IO1 Labajao kept custody of the still unmarked eight (8) sachets of illegal drugs confiscated from Tampan, while in transit from the place of arrest up to the Philippine Drug Enforcement Agency (PDEA) office. The Court held that the fact that “x x x the packs of *shabu*, (sic) subject of possession were all placed in one plastic pack separate from the *shabu* sold x x x” did not eliminate the possibility of exposure to the threat of alteration, substitution, or tampering by accident or otherwise – the very dangers that the marking requirement seeks to avert, especially that the prosecution failed to establish the precautionary measures taken in preserving the identity of the seized items. Clearly, the probability that the integrity and evidentiary value of the *corpus delicti* had been compromised is extant.

Further, in *Malmis v. People*,⁹ the Court overturned the verdict of conviction for failure of the prosecution to establish the first link in the chain of custody of the seized *shabu*. Even prior to marking, the apprehending officers already commingled the drugs seized during the entrapment operation with those recovered from the accused after his arrest. This created doubt on the identity, integrity, and evidentiary value of the seized *shabu*. The courts had no way of identifying which, among the eight (8) commingled sachets of *shabu*, were the subject of illegal sale, on one hand, and of illegal possession, on the other. Too, the weight of the respective seized items, which would have been the basis for the imposition of the proper penalties, could not be reasonably determined. The Court held that the failure of the prosecution to establish the first link in the chain of custody merits the acquittal of the accused.

So must it be.

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⁸ G.R. No. 222648, February 13, 2019.

⁹ G.R. No. 248676, November 18, 2021.

The **second link** is the transfer of the seized drug by the apprehending officer to the investigating officer. The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating officer's possession of the seized drug must be documented and established.¹⁰

Records show that the seized drugs here were not turned over by the apprehending officers to the investigating officer.

The prosecution claimed that Senior Police Officer 2 Alan Pagulayan (SPO2 Pagulayan) was the investigating officer and it was he who prepared both the inventory sheet and requests for laboratory examination of the seized illegal drugs and drug test of the accused, viz.:

x x x x

Q: After the search[,] what happened next?
A: PSI Baquiran called the investigator and also the barangay official and DOJ representative to witness the inventory of confiscated items, sir.

Q: Did the investigator arrive?
A: Yes, sir.

Q: **Who was the investigator?**
A: **SPO2 Pagulayan, sir.**

x x x x

Q: After you made the markings[,] what happened next?
A: After xxx [marking] the confiscated drug and non-drugs, **the investigator prepared the inventory sheet, sir.**

x x x x

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¹⁰ *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

- Q: What happened next when you arrived at the police station?
- A: **The investigator prepared the request for laboratory examination and drug test of the accused, sir.**¹¹ (Emphases supplied)

x x x x

Contrary to PO3 Beran's claim, however, the Inventory and Receipt of Evidence¹² did not at all bear the name and signature of SPO2 Pagulayan as the supposed investigating officer. On the other hand, the Request for Laboratory Examination¹³ was signed by Police Senior Inspector Aileen Nicolas (PSI Nicolas), not by SPO2 Pagulayan.

More important, while SPO2 Pagulayan was identified as the supposed investigator, he never got hold at all of the drugs in question. For the seized illegal drugs never left the custody of PO3 Beran and PO1 Maribbay. The trial court itself found that PO3 Beran and PO1 Maribbay kept possession of the seized illegal drugs subject of the sale and recovered from appellant's pocket, respectively, from the place of arrest up until its delivery to the crime laboratory for qualitative examination, viz.:

From the place of [arrest], the buy-bust team brought the accused to the Tuguegarao City Police Station. [O]n board one vehicle were [PO3] Beran, [PO1] Maribbay[,] and the accused. [PO3] Beran had in his custody the one (1) plastic sachet[,] with his markings RPB 07-14-17 and xxx signature[,] that he bought from the accused[,] while [PO1]Maribbay was [in custody of] the one (1) plastic sachet with his marking PSM 07-14-17 and signature xxx. At the Tuguegarao City Police Station, Beran and Maribbay retained xxx the plastic sachets in their respective custody[,] and both brought them to the Regional Crime Laboratory for laboratory examination[,] with the accused in their company, [PO3] Beran holding the one (1) plastic sachet he bought, and [PO1] Maribbay holding the other one (1) piece plastic sachet he recovered from the accused. xxx¹⁴

PO3 Beran testified:

x x x x

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¹¹ TSN, October 26, 2017, pp. 6-10.

¹² Record, p. 19.

¹³ Record, p. 15.

¹⁴ CA *rollo*, pp. 8-9.

Q: You said that you called investigator Pagulayan because he is the [investigating] officer in this case?

A: Yes, sir.

Q: Investigator Pagulayan arrived to perform his duty as investigator[.] [U]pon arrival, you and PO1 Maribbay handed him the 2 [pieces] plastic sachets for him to make necessary documentation?

A: **I did not give the plastic sachets, sir.**¹⁵
(Emphasis supplied.)

x x x x

On the other hand, PO1 Maribbay stated:

x x x x

Q: My question now is, who was in possession of the items which you confiscated from the accused from the place of the transaction to the City Police Station?

A: I was still holding the items I confiscated.

x x x x

Q: So, when you brought the accused to the crime laboratory, who was then in possession of the items which you confiscated from him?

A: I was holding the item.

x x x x

Q: And to whom did you submit the items?

A: PO2 Delayun.¹⁶

x x x x

Indeed, the miniscule quantity of confiscated illicit drugs here demanded stringent conformity with the procedures laid down by RA 9165, as amended, and its implementing rules. Unfortunately, the

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¹⁵ TSN, October 26, 2017, p. 16.

¹⁶ TSN, April 6, 2018, p. 15.

police officers' attempt at compliance fell short of the requirements of the law. Verily, the unjustified deviation from the chain of custody rule compromised the integrity and identity of the *corpus delicti*.¹⁷

In *People v. Dahil*,¹⁸ the Court acquitted the accused because of the gaps in the chain of custody, specifically on the **second link**. The Court said:

Second Link: Turnover of the Seized Drugs by the
Apprehending Officer to the Investigating Officer

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.

The investigator in this case was a certain SPO4 Jamisolamin. Surprisingly, there was no testimony from the witnesses as to the turnover of the seized items to SPO4 Jamisolamin. It is highly improbable for an investigator in a drug-related case to effectively perform his work without having custody of the seized items. Again, the case of the prosecution is forcing this Court to resort to guesswork as to whether PO2 Corpuz and SPO1 Licu gave the seized drugs to SPO4 Jamisolamin as the investigating officer or they had custody of the marijuana all night while SPO4 Jamisolamin was conducting his investigation on the same items. x x x (Emphasis supplied.)

Similarly in *People v. Remigio*,¹⁹ the arresting officer/poseur-buyer admitted that he alone had custody of the five (5) plastic sachets of *shabu* from the time of confiscation until the time he transferred them to the forensic chemist. The prosecution failed to account for the

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¹⁷ *People v. Amarin*, G.R. No. 224884 (Notice), December 10, 2019.

¹⁸ 750 Phil. 212, 234-235 (2015).

¹⁹ 700 Phil. 452, 469 (2012).

second link in the chain of custody where the seized illegal drugs should have been turned over by the apprehending officer to the investigating officer. Further, the prosecution failed to offer any testimony or document to clarify the participation in the chain of custody of the police officer who signed the request for laboratory examination. The Court ruled that mere stipulations cannot remedy a break in the chain of custody, hence, accused Remigio was acquitted.

Here, the *second link* had also been blatantly breached. The prosecution witnesses admitted that the seized illegal drugs were never turned over to the investigating officer. No explanation was offered for this omission. To reiterate, both the Inventory and Receipt of Evidence and Request for Laboratory Examination do not bear the name and signature of SPO2 Pagulayan, either as the investigating officer or in another capacity. On the other hand, the Request for Laboratory Examination was signed by PCI Nicolas, not by the supposed investigating officer, SPO2 Pagulayan.

The presumption of regularity in the performance of official duties in favor of the police officers will not save the prosecution's case, given the foregoing procedural lapses. The presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance, the presumption of regularity will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused.²⁰

All told, the prosecution failed to establish an unbroken chain of custody in this case. The integrity and identity of the *corpus delicti* was not established at all. Petitioner's acquittal, therefore, is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 29, 2019 of the Court of Appeals in CA-G.R. CR HC No. 11436 is **REVERSED** and **SET ASIDE**.

JAYSON NARAG y ABANA @ "PETE" is **ACQUITTED** of violations of Sections 5 and 11, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director General of the Bureau of Corrections, Muntinlupa City to cause the immediate release of Jayson Narag y Abana @ "Pete" from custody unless he is being held for some other lawful case, and to submit his report on the action taken within five (5) days from notice.

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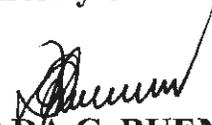
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²⁰ *People v. Diputado*, 813 Phil. 160, 176 (2017).

Let an entry of judgment immediately issue.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *ms/12*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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