



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 26, 2023 which reads as follows:

“G.R. No. 258184 (*People of the Philippines v. Alexander Fermin y Arcalas*). — On appeal is the September 21, 2020 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10152, which affirmed the September 22, 2017 Decision² of the Regional Trial Court (RTC), Branch 52, Tayug, Pangasinan, in Criminal Case No. T-6289, finding accused-appellant Alexander Fermin y Arcalas (Fermin) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165,³ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

Antecedents

In an Information⁴ dated January 28, 2016, Fermin was charged with violation of Sec. 5, Art. II of RA 9165, which alleged:

That at about past 4:10 o'clock in the afternoon of January 27, 2016 at Brgy, Zamora, municipality of Tayug, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, during buy-bust operation conducted against him, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride or *shabu* weighing 0.001 gram, a dangerous drug, marked as “GM-3” for and in consideration of two (2) pieces of One Hundred Peso Bill bearing serial numbers WP276463 and BN916419 marked as “GM-1” and “GM-2”, respectively.

CONTRARY to Sec. 5, Art. 2 of Republic Act 9165, otherwise known as “Comprehensive Dangerous Drugs Act.”⁵

¹ *Rollo*, pp. 9-21. Penned by Associate Justice Pablito A. Perez and concurred in by Associate Justices Geraldine C. Fiel-Macaraig and Alfredo D. Ampuan.

² *Id.* at 23-29. Penned by Judge Emma S. Ines-Parajas.

³ 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.

⁴ Records, p. 1.

⁵ *Id.*

Upon arraignment, Fermin pleaded not guilty to the crime charged.⁶ Trial on the merits thereafter ensued.

Version of the Prosecution

Police Officer 3 Geoffrey Marcadejas (PO3 Marcadejas) asserted that prior to Fermin's arrest, the latter was already in the Tayug Police Station's "watch list" of persons involved in illegal drug trade.⁷ On January 27, 2016, at around 3:00 p.m., a confidential asset went to Tayug Police Station and informed PO2 Junir Tabilin (PO2 Tabilin) of Fermin's drug trade in Brgy. Zamora.⁸ Upon learning such information, PO2 Tabilin immediately reported to their Chief of Police.⁹ Thereafter, a team was formed to conduct a buy-bust operation against Fermin.¹⁰ PO3 Marcadejas was assigned as the *poseur-buyer* and two PHP 100.00 bills were prepared as buy-bust money.¹¹ PO2 Tabilin, on the other hand, was designated as back-up arresting officer.¹² It was agreed upon that PO3 Marcadejas would remove his bullcap to signal that the transaction has been consummated.¹³ PO2 Allan Abelon A. Dilan coordinated with the Philippine Drug Enforcement Agency regarding the planned operation.¹⁴

Right after the briefing, the confidential asset contacted Fermin and they agreed to meet at Brgy. Zamora.¹⁵ At around 4:10 p.m., PO3 Marcadejas, together with PO2 Tabilin and the confidential asset, arrived at the target area.¹⁶ PO2 Tabilin positioned himself near the place of transaction while PO3 Marcadejas and the confidential asset waited for Fermin to arrive. A few minutes later, Fermin arrived on board a motorcycle.¹⁷ He briefly conversed with the confidential asset, who then introduced PO3 Marcadejas as the buyer.¹⁸ PO3 Marcadejas then alighted from his motorcycle¹⁹ and handed to Fermin the buy-bust money.²⁰ Fermin, in turn, gave one heat-sealed transparent plastic sachet containing white crystalline substance suspected to be shabu.²¹ Thereafter, PO3 Marcadejas executed the pre-arranged signal to inform the buy-bust team that the transaction has been consummated.²² PO2 Tabilin then immediately approached the target area and arrested Fermin.²³

⁶ Id. at 38.

⁷ TSN, May 19, 2016, p. 16.

⁸ Id.

⁹ Id. at 17.

¹⁰ Id.

¹¹ Id. at 17-18.

¹² Id. at 19.

¹³ Id. at 21.

¹⁴ TSN, May 19, 2016, p. 19; records, p. 7.

¹⁵ TSN, May 19, 2016, pp. 18-19.

¹⁶ Id. at 20.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 21.

²² Id.

²³ Id.



PO2 Tabilin introduced himself as a police officer and apprised Fermin of his constitutional rights.²⁴ Thereafter, PO3 Marcadejas subjected Fermin to a body search and recovered from the latter the buy-bust money.²⁵ He then marked the same with “GM-1” and “GM-2,” respectively.

The buy-bust team then called the insulating witnesses to the marking and inventory of the seized drugs.²⁶ At the place of transaction, PO2 Marcadejas conducted the inventory in the presence of Fermin, two barangay elected officials, Ronulfo Goloya and Edmund Jacinto, Department of Justice representative Angel Sweet Barlongo, and media representative Marie Mildred Coquia.²⁷ PO3 Marcadejas marked the plastic sachet with “GM-3.”²⁸ Photographs were likewise taken during the on-site inventory by the investigator-in charge, PO2 Leody M. Ortiz (PO2 Ortiz).²⁹

After the inventory, Fermin was brought to the police station. En route to the police station, PO3 Marcadejas retained custody of the seized drug.³⁰ A Request for Laboratory Examination was prepared and PO3 Marcadejas proceeded to the Philippine National Police Crime Laboratory.³¹ At 6:30 p.m., PO3 Marcadejas turned over the seized drugs to PO1 Ryan Jovellanos, the duty desk officer at the crime laboratory.³² Thereafter, at around 6:33 p.m., the seized drug was turned over to Police Chief Inspector Maria Joanna Ang (PCI Ang), the forensic chemist.³³

PCI Ang conducted a qualitative examination on the seized drug.³⁴ Chemistry Report No D-071-2016-U³⁵ indicated that the seized contraband tested positive for the presence of methamphetamine hydrochloride, a dangerous drug.

Version of the Defense

Fermin vehemently denied the prosecution’s version of the incident and raised denial and frame-up as his defenses. He narrated that on January 27, 2017 at around 3:00 p.m., he was sitting at a nipa hut in the middle of Stephen Acosta’s (Acosta) farm located in Brgy. Zamora.³⁶ Thereafter, three armed individuals rushed towards him.³⁷ He asked them what he did wrong³⁸ but

²⁴ Id.

²⁵ TSN, June 2, 2016, p. 36.

²⁶ TSN, May 19, 2016, p. 21.

²⁷ Id. at 21-24.

²⁸ Id. at 24.

²⁹ Id. at 25.

³⁰ TSN, June 2, 2016, p. 37.

³¹ Records, p. 9.

³² Id at 60.

³³ Id.

³⁴ TSN, April 27, 2016, p. 3.

³⁵ Records, p. 10.

³⁶ TSN, May 11, 2017, pp. 55-56.

³⁷ Id. at 56-57.

³⁸ Id. at 57.

instead of responding, the armed individuals suddenly checked his belt bag and pockets but they found nothing.³⁹ Subsequently, they brought Fermin to his motorcycle parked at the roadside where a police mobile was also parked.⁴⁰ The police officers took Fermin's keys, handcuffed him, and opened the U-box on his motorcycle.⁴¹ During this time, one of the police officers declared that he found a plastic sachet.⁴² Another police officer then brought out two PHP 100.00 bills.⁴³ Suddenly, both the plastic sachet and the money were placed on top of Fermin's motorcycle.⁴⁴ After 30 minutes, the witnesses arrived at the area and the police officers immediately marked the seized plastic sachet.⁴⁵ Fermin was boarded on the police mobile and brought to the police station where he was detained.⁴⁶

Ruling of the Regional Trial Court

The RTC, in its Decision⁴⁷ dated September 22, 2017, found Fermin guilty beyond reasonable doubt of the offense charged. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the accused is found GUILTY as charged and is sentenced to life imprisonment and ordered to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

SO ORDERED.⁴⁸

The RTC held that the prosecution sufficiently established all the elements of the crime charged. The police officers had substantially complied with the chain of custody rule, and the integrity and evidentiary value of the *corpus delicti* were preserved. The trial court rejected Fermin's defenses of denial and frame-up for being uncorroborated.

Aggrieved, Fermin appealed his conviction before the CA.

Ruling of the Court of Appeals

In its assailed September 21, 2020 Decision,⁴⁹ the CA affirmed the trial court's Decision finding Fermin guilty of violation of Sec. 5, Art. II of RA 9165. It sustained the trial court's ruling that the integrity and the evidentiary value of the *corpus delicti* have been preserved, and the chain of custody remained unbroken.

³⁹ Id. at 58.

⁴⁰ Id. at 58-59.

⁴¹ Id. at 59.

⁴² Id. at 60.

⁴³ Id. at 61.

⁴⁴ Id.

⁴⁵ Id. at 61-62.

⁴⁶ Id. 62-63.

⁴⁷ *Rollo*, pp. 23-29.

⁴⁸ Id.

⁴⁹ Id. at 9-21.

The appellate court likewise rejected the defenses of denial and frame-up proffered by Fermin, holding that these defenses are insufficient to overthrow the overwhelming evidence presented against him.

Finally, the CA ruled that the penalty imposed by the trial court was proper. Thus, the dispositive portion of the CA Decision reads:

WHEREFORE, the appeal is DENIED.

The Decision of the Regional Trial Court of Pangasinan-Branch 52, dated September 22, 2017, in criminal case No. T-6289 is AFFIRMED IN TOTO.

SO ORDERED.⁵⁰

Hence, the instant appeal.

Issue

Whether the CA correctly found Fermin guilty beyond reasonable doubt of violation of Sec. 5, Art. II of RA 9165.

Our Ruling

The appeal is meritorious.

It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.⁵¹ Appeals of criminal cases confer upon the reviewing court full jurisdiction and render it competent to examine the records, revise the judgment from which an appeal arose, increase the penalty, and cite the appropriate penal law provision.⁵² Thus, this Court may still review the factual findings of the trial court “if it is not convinced that [such findings] are conformable to the evidence of record and to its own impressions of the credibility of the witnesses.”⁵³ Significant facts and circumstances may have been overlooked, which, if properly considered, could affect the result of the case.⁵⁴

In the prosecution of Illegal Sale of Dangerous Drugs, the dangerous drug itself forms part of the *corpus delicti* of the offense. Thus, the integrity

⁵⁰ Id.

⁵¹ *Constantino v. People*, G.R. No. 225696, April 8, 2019, citing *Ferrer v. People*, 518 Phil. 196, 220 (2006).

⁵² Id., citing *Lamsen v. People*, 821 Phil. 651, 659 (2017).

⁵³ Id., citing *People v. Macasinag*, 255 Phil. 279, 281 (1989).

⁵⁴ Id., citing *People v. Ortiz*, 334 Phil. 590, 601 (1997).

of the *corpus delicti* must be established with moral certainty through an unbroken chain of custody.⁵⁵

There are four links that the prosecution must successfully account for, to wit:

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 by the forensic chemist to the court.⁵⁶

Verily, We find that the second link had been seriously breached.

As can be gleaned from the established facts, PO3 Marcadejas personally marked at the place of transaction the plastic sachet containing white crystalline substance that the accused-appellant handed over to him. PO3 Marcadejas was the only person who took custody and control of the seized drug and immediately submitted the same for laboratory examination. Upon receipt from the crime laboratory, PCI Ang prepared the chemistry report on her findings.

Evidently, PO3 Marcadejas' testimony on the material details of the supposed turnover of the seized drugs to the investigating officer at the police station before their submission to the crime laboratory for qualitative examination was missing. This refers to the second link which involves the turnover of the seized drugs to the investigating officer.

*People v. Dahil*⁵⁷ explained the importance of the second link in the chain of custody:

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.

⁵⁵ *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

⁵⁶ *People v. Siaton*, 789 Phil. 87, 98-99 (2016).

⁵⁷ 750 Phil. 212 (2015).

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.

In *People v. Remigio*, the Court noted the failure of the police officers to establish the chain of custody as the apprehending officer did not transfer the seized items to the investigating officer. The apprehending officer kept the alleged shabu from the time of confiscation until the time he transferred them to the forensic chemist. The deviation from the links in the chain of custody led to the acquittal of the accused in the said case.⁵⁸

Since PO3 Marcadejas was in custody of the seized drugs the entire time preceding the transmittal to the crime laboratory, he should have testified on the steps he undertook to ensure that the integrity and evidentiary value of the seized drugs were not compromised. However, PO3 Marcadejas' testimony is bereft of any such testimony. Neither was there an explanation why he, as the apprehending officer, failed to turn over the seized drugs to the investigator-in-charge, PO2 Ortiz, who in turn should record the incident and prepare the necessary documents. Clearly, no justification was presented by the prosecution on why the seized items were presented directly by the apprehending officer to the forensic chemist. Thus, PO3 Marcadejas' act of taking custody of the seized items until its submission to the forensic chemist and the failure to turn them over to the investigating officer are considered breaks in the chain of custody.

In fine, such deviation from the chain of custody rule is fatal to the prosecution's case as it raises serious doubts on the preservation of the integrity and evidentiary value of the seized illegal drugs. This Court is therefore constrained to conclude that the integrity and evidentiary value of the seized items were compromised, which consequently warrants accused-appellant's acquittal.

As a final note, We reiterate Our pronouncement in *People v. Holgado*⁵⁹:

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more

⁵⁸ Id. at 235. Citations omitted.

⁵⁹ 741 Phil. 78 (2014).

effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.⁶⁰


WHEREFORE, the appeal is **GRANTED**. The September 21, 2020 Decision of the Court of Appeals in CA-G.R. CR-HC No. 10152 is **REVERSED AND SET ASIDE**. Accused-appellant **ALEXANDER FERMIN y ARCALAS** is **ACQUITTED** of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. T-6289. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is ordered to submit his compliance report within five (5) days from notice.

Let entry of judgment be immediately issued.

SO ORDERED.” *Rosario, J., on leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *10514*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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The Hon. Presiding Judge
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(Crim. Case No. T-6289)

⁶⁰ Id. at 100.

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