



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **June 14, 2023** which reads as follows:*

“G.R. No. 252383 (PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. JOSELITO FERNANDEZ y ESTRELLA a.k.a. “Palito,” Accused-Appellant). — Assailed in this appeal is the conviction of Joselito Fernandez y Estrella (Joselito), also known as “Palito,” for violation of Sections 5¹ and 11,² Article II³ of Republic Act (RA) No. 9165⁴ in the November 22, 2018 Decision⁵ of the Court of Appeals in CA-G.R. CR-HC No. 10262, which affirmed the Judgment⁶ of the Regional Trial Court, Branch 23, Naga City (RTC).

Antecedents

On May 3, 2017, about 2:00 in the afternoon, a confidential informant arrived at the Naga City Police Station 1, and reported about the illegal drug activities of Joselito. Station Commander Police Chief Inspector Josefa Sylvia Zape (PCI Zape) then instructed Police Officer 1 Marlon Vhincen M. Baldoza (PO1 Baldoza) to validate the tip. At 3:00 in the afternoon of the same day, PO1 Baldoza and the confidential informant went to the house of Joselito in Mabolo, Naga City. Upon arrival, PO1 Baldoza saw several drug personalities going in and

¹ Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

² Possession of Dangerous Drugs.

³ Unlawful Acts and Penalties.

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 on June 7, 2002.

⁵ *Rollo*, pp. 3–17. Penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court) with the concurrence of Associate Justices Rosmari D. Carandang (retired Member of this Court) and Amy C. Lazaro-Javier (now a Member of this Court) of the Third Division, Court of Appeals, Manila.

⁶ *CA rollo*. at 61–74. Penned by Presiding Judge Valentin E. Pura, Jr.

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out of Joselito's house. Meanwhile, the informant went inside, and after an hour, returned to PO1 Baldoza, and reported that Joselito was inside repacking *shabu* with two other persons. The informant also told PO1 Baldoza that Joselito offered to sell *shabu* anytime and that the informant may contact him through his cellphone. PO1 Baldoza and the informant went back to the police station, and reported the outcome of their surveillance to PCI Zape, who coordinated the conduct of a buy bust operation against Joselito with the Regional Anti-Illegal Drug Enforcement Unit and the City Anti-Illegal Drug Enforcement Unit.⁷

In the evening of the same day, the confidential informant contacted Joselito, and arranged for the purchase of PHP 500.00-worth of *shabu*. Joselito agreed to meet the informant and her buyer at Room 422 of Sampaguita Tourist Inn located along Riverside, San Francisco, Naga City. A briefing was held, where PO1 Baldoza was designated as poseur buyer, arresting officer and recorder,⁸ and the other members were tasked to provide perimeter security.⁹ The buy bust team then proceeded to Sampaguita Tourist Inn; PO1 Baldoza and the informant occupied Room 422, while the others stayed at the adjacent room to wait for the pre-arranged signal.¹⁰

Joselito arrived at Room 422 around 1:00 in the morning of May 4, 2017. After a brief conversation with the informant, Joselito demanded for payment. PO1 Baldoza gave the PHP 500.00 buy-bust money, while Joselito took out a sachet of *shabu* from the secret pocket of his pants and gave it to PO1 Baldoza. After the exchange, the informant went out of Room 422, and transferred to the adjacent room to inform the rest of the buy-bust team of the completion of the transaction. The police officers then rushed to Room 422, and arrested Palito.¹¹

Thereafter, in the presence of National Prosecution Service (NPS) representative, Mr. Villareal, Barangay Chairman Tomas Ramon Alarza Sanchez, Jr. (Brgy. Chairman Sanchez, Jr.) and media representative, Tex Agor (Agor), PO1 Baldoza frisked Joselito and recovered four pieces of heat-sealed transparent plastic sachet containing white crystalline substance, a brown wallet containing the buy-bust money and other cash amounting to PHP 250.00, and a cellular phone. PO1 Baldoza marked the seized items with his initials, the date, and his signature.¹² An inventory was also made in the presence of Joselito, NPS representative Mr. Villareal, Brgy. Chairman Sanchez, Jr., and media representative Agor.¹³

⁷ *Id.* at 5.

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* PO1 Baldoza made the following markings:

- 'MVMB 5-4-17' and signature on the sachet bought from Joselito
- 'MVMB-1' to 'MVMB-4', '5-4-17' and signature on the four sachets recovered from Joselito after frisking
- 'MVMB-5 5-4-17' and signature on the brown wallet; and 'MVMB-5A 5-4-17' on the cash inside worth P250.00
- 'MVMB-6 5-4-17' and signature on the cellular phone unit

¹³ *Id.*

The team then brought Joselito to the police station for booking. About 4:00 in the morning, PO1 Baldoza and PO2 Bayola delivered the seized drugs to the crime laboratory for examination, and were received by Police Officer 2 Alex Purisima (PO2 Purisima). Immediately thereafter, an examination of the items was conducted by Forensic Chemist, Police Senior Inspector Zarina Zaldua-Cunom (PSI Zaldua-Cunom). All five sachets tested positive for methamphetamine hydrochloride, a dangerous drug.¹⁴

Consequently, Joselito was charged with illegal sale and possession of dangerous drugs under the following Informations:

Criminal Case No. 2017-0377 – for illegal sale of dangerous drugs

That on or about May 4, 2017, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did, then and there willfully, unlawfully and criminally sell, dispense and deliver one (1) pc. heat-sealed transparent plastic sachet with marking MVMB 4-4-17 with signature, weighing 0.012 gram, containing white crystalline substance to poseur-buyer PO1 Marlon Vincent M. Baldoza, which when tested, was found positive for the presence of Methamphetamine hydrochloride popularly known as “shabu”, a dangerous drug, in violation of the above-cited law.

ACTS CONTRARY TO LAW.¹⁵

Criminal Case No. 2017-0378 – for illegal possession of dangerous drugs

That on or about May 4, 2017, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law did then and there, willfully, unlawfully and criminally have in his possession, custody and control four (4) pieces heat-sealed transparent plastic sachet with markings MVMB-1 5-4-17, weighing 0.030 gram; MVMB-2 5-4-17, weighing 0.024 gram; MVMB-3 5-4-17 with traces; and MVMB-4 5-4-17, weighing 0.162 gram, all with signature, all containing white crystalline substance with a total weight of 0.216 gram, tested and determines to be Methamphetamine Hydrochloride popularly known as “shabu”, a dangerous drug in violation of the above-cited law.

ACTS CONTRARY TO LAW.¹⁶

When arraigned, Joselito pleaded not guilty.¹⁷ Joselito claimed that he was framed up, and denied having sold *shabu* to PO1 Baldoza nor being in possession of *shabu* when he went to Sampaguita Hotel.¹⁸ He narrated that, around 12:30 in the morning of May 4, 2017, he received a phone call from a certain Bebot, who instructed him to bring *shabu* to Sampaguita Hotel in San Francisco, Naga City. He told Bebot that he did not have *shabu* with him, and instead, volunteered to go to the hotel to get the money and buy *shabu* for her. When he arrived at Room

¹⁴ *Id.* at 7.

¹⁵ *CA rollo*, pp. 61–62.

¹⁶ *Id.* at 62.

¹⁷ *Id.* at 61.

¹⁸ *Rollo*, p. 7.

422 of Sampaguita Hotel, somebody pulled him in. Inside the room, there were four male persons and two female persons. The men punched him on the stomach, forced him to lie face down on the floor and handcuffed him. His pockets were then emptied and the men took his wallet containing PHP 250.00.¹⁹

On November 22, 2017, the RTC convicted Joselito as charged,²⁰ and sentenced him as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding herein accused JOSELITO FERNANDEZ Y ESTRELLA a.k.a. "PALITO", GUILTY as charged in both cases.

In Criminal Case No. 2017-0377 for Violation of Section 5, Article II of R.A. No. 9165, accused JOSELITO FERNANDEZ Y ESTRELLA a.k.a. "PALITO" is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE of P500,000.00.

In Criminal Case No. 2017-0378 for Violation of Section I1 of R.A. 9165, accused JOSELITO FERNANDEZ Y ESTRELLA a.k.a. "PALITO" is hereby sentenced to suffer the penalty of Twelve (12) years and one (1) days to Fourteen (14) years and Eight (8) months imprisonment and to pay a FINE of P300,000.00.

x x x x

SO ORDERED.²¹

The RTC held that the prosecution was able to establish all the elements of the crimes charged. A transaction for the purchase of *shabu* worth PHP 500.00 was concluded between Joselito and PO1 Baldoza at Room 422 of Sampaguita Hotel, San Francisco, Naga City. PO1 Baldoza clearly narrated the details of the transaction. After the sale transaction, Joselito was found in possession of four more sachets of *shabu*. PO1 Baldoza properly marked the sachets seized from Joselito with his initials and the date, as well as his signature. An inventory was made in the presence of the barangay chairman of San Francisco, Naga City and representative from the media and the NPS. After marking and inventory, PO1 Baldoza personally delivered the items to the crime laboratory, where they were received by PO2 Purisima. PO2 Purisima then turned them over to Forensic Chemist PSI Zaldua-Cunom for examination that yielded positive results for methamphetamine hydrochloride.

On appeal, Joselito argued that the *corpus delicti* was not established since the apprehending team failed to observe the requirements under Section 21 of RA No. 9165. There is no evidence that Agor was a representative from the media nor was there proof that Mr. Villareal was a representative from the NPS. There was likewise no indication where the inventory was signed. Joselito contends that the prosecution failed to establish every link in the chain of custody, rendering the identity of the *corpus delicti* questionable. PO1 Baldoza, PO2 Purisima and PSI

¹⁹ *Id.*

²⁰ *CA rollo*, pp. 61-74.

²¹ *Id.* at 73-74.

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Zaldua-Cunom failed to testify on how they handled the confiscated items and if other people had access to them.

On the other hand, the People of the Philippines, through the Office of the Solicitor General (OSG), countered that the prosecution sufficiently established the conduct of a valid buy bust operation against Joselito, where he was caught *in flagrante delicto* selling *shabu* to the poseur buyer, PO1 Baldoza, for PHP 500.00. After the sale transaction, Joselito was caught in possession of four more plastic sachets containing white crystalline substance, which when tested all gave positive results for methamphetamine hydrochloride. The chain of custody over the seized drugs was duly proven by the prosecution when PO1 Baldoza, immediately after Joselito's arrest, marked the items with initials, the date and his signature. Thereafter, an inventory was made in the presence of Joselito and the mandatory witnesses. The confiscated articles were then delivered to the crime laboratory, and when examined, all tested positive for methamphetamine hydrochloride.

In a Decision dated November 22, 2018, the CA affirmed the conviction of Joselito,²² and confirmed that there was a perfected sale of *shabu* during a legitimate buy bust operation conducted by the police at Room 422 of Sampaguita Tourist Inn. Consequently, the subsequent search incidental to Joselito's warrantless arrest led the apprehending team to recover four more plastic sachets with suspected *shabu*. There was no break in the chain of custody over the seized drugs since the custody and possession over the confiscated drugs were all duly accounted for by the prosecution. The buy bust team properly marked the items upon seizure, and the items were photographed and inventoried in the presence of Joselito and the insulating witnesses.

Aggrieved, Joselito filed the present appeal.

On February 17, 2021, the parties were required to file their supplemental briefs.²³ Consequently, the People of the Philippines, through the OSG,²⁴ and Joselito²⁵ filed separate manifestations that they no longer intend to file their respective supplemental briefs, and are adopting the arguments made in their appeal briefs filed with the CA.

The appeal is meritorious.

We acquit Joselito on the ground of the prosecution's failure to prove that the apprehending team complied with the mandatory chain of custody

²² *Rollo*, pp. 3–17. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The Judgment dated November 22, 2017 of the Regional Trial Court of Naga City, Branch 23 in Criminal Case Nos. 2017-0377 and 2017-0378 is hereby **AFFIRMED**.

SO ORDERED.

²³ *Id.* at 26–27.

²⁴ *Id.* at 28–30.

²⁵ *Id.* at 33–35.

requirements under Section 21 of RA No. 9165 resulting in serious doubts as to the identity of the *corpus delicti*.

For prosecutions involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti* of the offense, and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Like the elements of the offense charged, the identity of the dangerous drugs must be established with moral certainty.²⁶ Evidence must show beyond reasonable doubt that the illegal drug presented in court is the same illegal drug actually seized from the accused. The rationale behind this stringent requirement is the unique characteristic of illegal drugs that renders it indistinct, not readily identifiable, and usually open to tampering, alteration, or substitution, either by accident or by deliberate act, especially when seized in small quantity.²⁷

In this regard, the law provides procedural safeguards to remove any doubt on the identity and integrity of the seized drug under the Chain of Custody rule. Chain of custody is the duly recorded authorized movements and custody of seized drugs, controlled chemicals, plant sources of dangerous drugs, or laboratory equipment showing each stage from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping in court for identification and destruction.²⁸

Specifically, 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. Notably, the alleged crime happened after RA No. 9165²⁹ was amended by RA No. 10640.³⁰ Section 21, Article II of RA No. 9165, as amended, outlines the post-seizure procedure for the custody and disposition of seized drugs, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and

²⁶ *People v. De Guzman y Delos Reyes*, 825 Phil. 43, 53 (2018) [Per Del Castillo, First Division].

²⁷ *People v. Nuarin*, 764 Phil. 550, 557 (2015) [Per J. Brion, Second Division].

²⁸ Dangerous Drugs Board Regulation No. 1, Series of 2002; *People v. Omamos*, 856 Phil. 391, 401 (2019) [Per J. Lazaro-Javier, Second Division].

²⁹ 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.

³⁰ 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, states that it shall "take effect fifteen (15) 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, 2013 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. See OCA Circular No. 77-2015 dated April 23, 2015.

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photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Indeed, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. The prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: 1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; 2) the turnover of the seized item by the apprehending officer to the investigating officer; 3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and 4) the submission of the item by the forensic chemist to the court.

Here, the records reveal a broken chain of custody. Following the post seizure measures of marking and inventory conducted at the place of arrest, the apprehending team transported Joselito and the confiscated items to the police station. The prosecution witnesses failed to testify on how the seized items were handled during transit from the place of arrest to the police station. The second link in the chain of custody requires the prosecution to establish the movement and custody of the seized drug, particularly, its turnover by the apprehending officer to the investigating officer, who shall conduct the proper investigation and shall prepare the necessary documents for the transfer of the evidence to the police crime laboratory for testing.³¹ Further, the third link in the chain of custody requires that the movement from the investigating officer to the forensic chemist be established. Once again, the prosecution witnesses failed to establish the condition of the seized items and how they were handled after the seizure and arrest while at the police station, and during the transit from police station to the crime laboratory. The police officers failed to account how the seized drugs were handled during their custody, delivery and turnover; thus, failing to demonstrate that the integrity of the evidence had all along been preserved. The police officers did not describe the precautions taken to ensure that there had been no change in the condition of the seized items and no opportunity for someone not in the chain to gain possession.

Lastly, the prosecution was not able to establish the fourth link in the chain of custody, or that relating to the turnover and submission of the seized drugs from the forensic chemist to the court. The testimonies of PO2 Purisima and forensic chemist PSI Zaldua-Cunom lack the details to remove any doubt that the integrity and evidentiary value of the *shabu* presented to the trial court were preserved. Their testimonies are silent on crucial details to demonstrate the handling, before, during, and after examination, *i.e.*, the condition of the specimen upon receipt by PO2 Purisima, and thereafter by PSI Zaldua-Cunom, the manner and procedure of examination conducted by PSI Zaldua-Cunom on the specimens, whether she

³¹ *People v. Dahil*, 750 Phil. 212, 235 (2015) [Per J. Mendoza, Second Division].

placed her own markings, and the packaging she used to keep the items. Moreover, the prosecution's testimonies did not mention whether the seized drugs were turned over to an evidence custodian of the crime laboratory. Necessarily, the records are barren of the particulars on how the drugs were kept after examination until their presentation in court as evidence. The lack of these vital information deprived the trial court of the means to ascertain that the evidence presented was not compromised.

We stress that the provisions of Section 21, Article II of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent persons. While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth. Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively disputed. All told, Joselito must be acquitted of the charges considering the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is **GRANTED**. The Decision dated November 22, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 10262 is **REVERSED**. Accused-appellant Joselito Fernandez y Estrella is **ACQUITTED** of the crimes charged on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for other causes.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director General is **ORDERED to REPORT** to this Court the action taken within five (5) days from receipt of this Resolution.

Let an entry of final judgment be issued immediately.

SO ORDERED." (Leonen, SAJ, on official leave. Lazaro-Javier, J., no part due to prior action in the Court of Appeals; Inting, J. designated additional member per Raffle dated September 23, 2020. Lopez, J.Y., J. no part due to prior action in the Court of Appeals; Singh, J. designated additional member per Raffle dated August 30, 2022.)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *10/12*
12 OCT 2023

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 23
Naga City
(Crim. Case Nos. 2017-0377 & 2017-0378)

Please notify the Court of any change in your address.
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