



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

LUIS DERILO y GEPOLEO,
Petitioner,

G.R. No. 190466

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

11 8 APR 2016

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DECISION

BRION, J.:

We resolve the appeal, filed by accused-appellant Luis Derilo y Gepoleo (*petitioner*), from the September 25, 2009 decision¹ and the December 8, 2009 resolution² of the Court of Appeals (*CA*) in CA-G.R. CR No. 31602.

The appealed decision affirmed the January 18, 2008 decision³ of the Regional Trial Court (*RTC*), Branch 65, Sorsogon City, finding the petitioner guilty beyond reasonable doubt of violation of Sections 11 and 12, Article II of Republic Act (*RA*) No. 9165,⁴ and sentencing him as follows: for **Criminal Case No. 04-711** – imprisonment of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine of ₱300,000.00; and for **Criminal Case No. 04-712** – imprisonment of six (6) months and one (1) day, as minimum, to four (4) years, as maximum, and to pay a fine of ₱10,000.00.

¹ *Rollo*, pp. 101-123; penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison.

² *Id.* at 135.

³ *Id.* at 51-69; penned by Judge Adolfo G. Fajardo.

⁴ Also known as the "Comprehensive Dangerous Drugs Act of 2002."

The Factual Antecedents

On November 19, 2004, at around 6:00 A.M., a team of police officers, led by SPO1 Sonny Evasco, conducted a police operation to serve a search warrant⁵ at the residence of the petitioner located in Lay-a, Gate, Bulan, Sorsogon.⁶ The police officers coordinated with the barangay captain of Gate who, in turn, sent two *barangay tanods* – Basilio Gueta and Santiago España – to accompany and assist the police officers in the service of the search warrant.⁷

After an initial search of the petitioner's pockets and wallet, SPO1 Evasco instructed Gueta and España to conduct a search inside the petitioner's bedroom (of the place described in the search warrant) as a precautionary measure for the police officers to avoid being accused of planting evidence.⁸ During the search, the *barangay tanods*, under the supervision of SPO1 Evasco,⁹ recovered twelve (12) plastic sachets¹⁰ inside a matchbox, each containing white crystalline substance.¹¹

The police officers also recovered suspected drug paraphernalia, *i.e.*, new and used aluminum foil, lighters, and a tube, which were scattered *in plain view* in different parts of the house. Some of the used aluminum foils were found under the house.¹²

While at the scene, SPO1 Evasco proceeded to mark the confiscated items with his initials, "S.B.E.," while SPO1 Calupit took their photographs. In addition, SPO1 Evasco prepared an inventory of the items seized, but the petitioner refused to sign the inventory.¹³

The petitioner and the seized items were then taken to the police station. Thereafter, the seized items were brought to the court and then to the PNP Crime Laboratory for examination by SPO1 Calupit and PO2 Lobrin.¹⁴

At the PNP Crime Laboratory, SPO1 Alejandro Usi, a drug screener/laboratory technician, conducted an *initial field test* of the drug specimens.¹⁵ Based on the **Certification of Laboratory Examination** dated November 19, 2004, the test yielded positive for *methamphetamine hydrochloride*, also known as "*shabu*," a dangerous drug.¹⁶

⁵ *Records*, Volume I, pp. 121-122.

⁶ TSN, July 5, 2005, p. 3.

⁷ TSN, November 13, 2006, pp. 10-11.

⁸ TSN, July 5, 2005, p. 20.

⁹ *Id.* at 28.

¹⁰ *Id.* at 5.

¹¹ TSN, November 13, 2006, p. 12.

¹² TSN, July 5, 2005, pp. 21-23.

¹³ *Id.* at 8-9.

¹⁴ *Id.* at 15.

¹⁵ TSN, February 7, 2006, p. 3.

¹⁶ *Records*, Volume I, p. 6.

The following day, P/Inspt. Josephine Clemens, the PNP Crime Laboratory's forensic chemist, conducted a confirmatory physical and chemistry examination of the drug specimens.¹⁷ Based on the **Chemistry Report** dated November 20, 2004, the twelve (12) plastic sachets indeed contained *shabu*,¹⁸ thus confirming the result of the earlier initial field test.

The prosecution charged the petitioner with violation of Sections 11 and 12, Article II of RA No. 9165, for possession of twelve (12) plastic sachets containing 0.3485 gram of *shabu* and for possession of drug paraphernalia, *i.e.*, forty-one (41) pieces of rolled aluminum foil, one (1) used aluminum foil, one (1) tube, two (2) lighters, and one (1) matchbox, respectively.¹⁹ The cases were docketed as Criminal Case Nos. 04-711 and 04-712.

In its decision dated January 18, 2008, the RTC found the petitioner guilty beyond reasonable doubt of both crimes charged and sentenced him as follows:

- a) In **Criminal Case No. 04-711**, [the petitioner] is sentenced to suffer the penalty of imprisonment, ranging from twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00); and,
- b) In **Criminal Case No. 04-712**, [the petitioner] is further sentenced to suffer the penalty of imprisonment, ranging from six (6) months and one (1) day, as minimum, to four (4) years, as maximum, and to pay a fine of Ten Thousand Pesos (₱10,000.00) and the costs of suit.²⁰

On appeal, the CA affirmed the RTC decision *in toto*. In its decision dated September 25, 2009, the appellate court ruled that: *first*, the delegation to the *barangay tanods* of the task of physically searching for illegal drugs in the petitioner's bedroom did not make the search irregular. Thus, the items seized, including the twelve (12) plastic sachets found by the *barangay tanods*, cannot be considered as "fruits of the poisonous tree." *Second*, the prosecution satisfactorily established the required link in the chain of custody of the seized items. *Third*, the alleged inconsistencies between the prosecution witnesses' testimonies appear to be minor and inconsequential and do not impair their credibility. *Fourth*, the failure of the police officers to coordinate with the Philippine Drug Enforcement Agency (*PDEA*) does not render the search illegal nor does it make the evidence seized from the petitioner's house inadmissible. And *fifth*, the petitioner's defenses of alibi and frame-up cannot overcome the narration of the incident by the prosecution's witnesses.²¹

¹⁷ TSN, October 11, 2005, p. 8.

¹⁸ *Records*, Volume I, p. 62.

¹⁹ *Id.* at 1; *Records*, Volume II, p. 1.

²⁰ *Rollo*, p. 69.

²¹ *Id.* at 117-122.

The petitioner moved for reconsideration, but the CA denied his motion in a resolution dated December 8, 2009.²² As a consequence, the petitioner filed the present petition for review on *certiorari* on January 26, 2010.

The Present Petition

The petitioner raises the following issues in the present petition:

First, the petitioner argues that the search became unlawful when SPO1 Evasco delegated the task of searching the bedroom to the *barangay tanods* for fear of being “branded” as planting evidence. Consequently, any evidence which may have been obtained during the search is absolutely inadmissible for being the “fruit of the poisonous tree.”²³

Second, the petitioner insists that there are inconsistencies with the prosecution witnesses’ testimonies as to who actually found the matchbox containing the twelve (12) plastic sachets and the suspected drug paraphernalia.²⁴

And *third*, the petitioner claims that the chain of custody over the seized items “appears broken and questionable,” considering that the seized items were not marked in his presence.²⁵ This puts into question the identity of the drug specimens submitted to the PNP Crime Laboratory for examination.²⁶

The Court’s Ruling

After due consideration, we resolve to **GRANT** the petitioner’s appeal for the prosecution’s failure to prove his guilt beyond reasonable doubt in Criminal Case Nos. 04-711 and 04-712.

Criminal Case No. 04-711

In criminal prosecutions, it is fundamental that the accused is presumed innocent of a charge until his guilt is proven beyond reasonable doubt.²⁷ In other words, the elemental acts constituting the offense must be established with moral certainty, as this finding and level of proof are the critical requisites to a finding of guilt.²⁸

For prosecutions involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is

²² *Id.* at 135.

²³ *Id.* at 18-19.

²⁴ *Rollo*, pp. 20-21.

²⁵ *Id.* at 23.

²⁶ *Id.* at 24.

²⁷ CONSTITUTION, Article III, Section 14(2).

²⁸ See *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 148.

vital to sustain a judgment of conviction beyond reasonable doubt.²⁹ It is of paramount importance that the identity of the dangerous drug be so established,³⁰ along with the elements of the offense charged. Proof beyond reasonable doubt in these cases demands an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him.³¹

In order to meet the quantum of proof required in drug-related prosecutions, the chain of custody requirement under Section 21 of RA No. 9165 ensures that doubts concerning the identity of the seized drugs are removed.³² As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.³³

To show an unbroken link in the chain of custody,³⁴ **the prosecution's evidence must include testimony about every link in the chain**, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witness would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have its possession. **It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.**³⁵

Thus, the following links must be established to ensure the preservation of the identity and integrity of the confiscated drug: 1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; 2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and 4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.³⁶

We stress that the marking of the seized drugs or other related items is crucial in proving the unbroken chain of custody in drug-related prosecutions.³⁷ As the first link in the chain of custody, the marking is of

²⁹ See *People v. Pedronan*, G.R. No. 148668, June 17, 2003, 404 SCRA 183, 190.

³⁰ See *People v. Mallillin*, 576 Phil. 576, 586 (2008).

³¹ *Supra* note 28, at 148-149.

³² See J. Brion's Dissenting Opinion in *People v. Dimaano*, G.R. No. 174481.

³³ *Supra* note 28, at 149.

³⁴ *People v. Alivio*, G.R. No. 177771, May 30, 2011, 649 SCRA 318, 330.

³⁵ *Supra* note 28, at 149.

³⁶ *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

³⁷ *Valencia v. People*, G.R. No. 198804, January 22, 2014, 714 SCRA 492, 504.

vital importance because succeeding handlers of the dangerous drugs or related items will use the marking as reference.³⁸ Also, the marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, “planting,” or contamination of evidence.³⁹ In other words, **the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**⁴⁰

After a critical review of the records, we hold that the prosecution *failed* to establish that the drug specimens presented in court are those allegedly seized from the petitioner.

First, the records are bereft of any evidence that would clearly show that the twelve (12) plastic sachets supposedly containing the *shabu* were ever marked by SPO1 Evasco, whether at the scene or at the police station, and that they were marked in the presence of the petitioner. In fact, based on the evidence on record, there is only one set of markings on the twelve (12) plastic sachets – the markings of “A-1” to “A-12” made by P/Inspt. Clemens a day after the items were seized.⁴¹

This finding is further supported by the testimony of P/Inspt. Clemens regarding the markings on the specimens she examined:

PROSECUTOR EMMA S. SALVADOR JANER:

Q: Did you place any markings on the sachets of *shabu* for purposes of easy reference?

P/INSPT. CLEMENS:

A: Yes, ma’am.

Q: And what are those markings, madam witness?

A: D-193-04, my initials and A-1 to A-12.

Q: Now, when you received the specimens of *shabu*, madam witness, [were] there any markings already placed thereon aside from the markings that you [placed]?

A: Yes, ma’am. A black marking.

Q: And what are these markings in particular?

A: **In the matchbox, “SBE” in all capital letters.**

³⁸ *Id.*

³⁹ *People v. Sabdula*, G.R. No. 184758, April 21, 2014, 722 SCRA 90, 100, citing *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289-290.

⁴⁰ *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 134.

⁴¹ *Records*, Volume I, p. 118; TSN, October 11, 2005, pp. 4 and 6.

Q: Whose markings is this, madam witness, on the front portion of the matchbox?

A: [These are] my markings and also from the drug screener who placed his own marking.

xxxx

Q: Now, there is a marking on the bottom portion of the matchbox SBE. Was that already placed when this matchbox reached your office?

A: Yes, ma'am.⁴² [Emphasis supplied.]

Based on the testimony of P/Inspt. Clemens, the only markings on the specimens submitted to her only consisted of the ones on the matchbox. **She made no mention of any markings (aside from her own) on the plastic sachets.**

Second, there appears to be unexplained inconsistencies in the drug specimens submitted by the police officers to the PNP Crime Laboratory for examination. On one hand, the Certification of Laboratory Examination dated November 19, 2004 states:

SPECIMEN SUBMITTED:

One (1) match box labeled "RIZAL" containing twelve (12) small transparent plastic sachets **marked "A" through "L,"** each containing suspected methamphetamine hydrochloride (*shabu*), and **having a total weight of 0.3485 gram.**⁴³ [Emphasis supplied.]

On the other hand, the Chemistry Report dated November 20, 2004 states:

SPECIMEN SUBMITTED:

One (1) match box with trade mark "RIZAL" containing twelve (12) small tape-sealed transparent plastic sachets with black and red markings **marked as A-1 through A-12,** each with white crystalline substance **having a total net weight of 0.3133 gram.**⁴⁴ [Emphasis supplied.]

These two laboratory reports show inconsistencies with regard to the referenced markings on the twelve (12) plastic sachets and, more importantly, to the weight of the drug specimens – from 0.3485 gram in the first test and only 0.3133 gram in the second test.

Clearly, the drug specimens that were allegedly seized by the police officers from the petitioner during the search operation *differed* or, at the very least, *were no longer in their original condition* when examined by

⁴² TSN, October 11, 2005, pp. 6-7.

⁴³ *Records*, Volume I, p. 6.

⁴⁴ *Id.* at 62.

P/Inspt. Clemens on November 20, 2004, a day after they were first subjected to an initial field test by SPO1 Usi.

Third, the prosecution's evidence is seriously lacking in details as to the links in the chain of custody of the seized items from the time they were confiscated up to the time they were presented in court.

A thorough examination of the records reveals that the following are the only testimonies relating to the chain of custody of the seized items:

PROSECUTOR EMMA S. SALVADOR JANER:

Q: xxx Now, what did you do with the confiscated items?

SPO1 EVASCO:

A: We brought the suspect as well as the confiscated items in the police station and after that, we brought the confiscated items to the court.⁴⁵

XXXX

Q: xxx Now, after turning over the items together with the specimens of *shabu* to the court, what did you do next?

A: We filed a motion to withdraw the items to have it examined at the crime laboratory.⁴⁶

XXXX

Q: xxx Now, after filing the manifestation to the court to withdraw the specimens of *shabu*, what did you do next?

A: I secured a request for laboratory examination.⁴⁷

XXXX

Q: xxx Who transmitted the specimens of *shabu* to the crime laboratory for examination?

A: **PO2 Wilfredo Lobrin and SPO1 Edgar Calupit.**⁴⁸ [Emphasis supplied.]

PROSECUTOR EMMA S. SALVADOR JANER:

Q: Madam Witness, [do] you recall as to when you [received] the specimen of *shabu* and the paraphernalia for examination?

P/INSPT. CLEMENS:

A: Yes, ma'am.

⁴⁵ TSN, July 5, 2005, p. 12.

⁴⁶ *Id.* at 13.

⁴⁷ *Id.* at 14.

⁴⁸ *Id.* at 15.

- Q: Will you please tell us?
- A: The specimen was received in our office on November 19, 2004 and it was personally turned over to me on November 20, 2004 by PO3 Edgar Calupit.⁴⁹
- Q: [Do] you know as to who is the particular person who received the specimens of *shabu*?
- A: **According to our information, it was our receiving officer.**⁵⁰
[Emphasis supplied.]

The above-quoted testimonies clearly point to SPO1 Calupit, PO2 Lobrin and an *unnamed* receiving officer as key persons who handled the seized items. The prosecution, therefore, should have asked these persons to testify regarding the circumstances under which they handled the subject items. Strangely, SPO1 Calupit and PO2 Lobrin, who both actually testified in court, were not at all asked by the prosecution to testify on the handling of the seized items in their custody. Rather, SPO1 Calupit's and PO2 Lobrin's testimonies only revolved around the implementation of the search warrant.

What cannot be ignored is the lack of specific details that would convince the Court that the specimens examined by SPO1 Usi and P/Inspt. Clemens were the same ones confiscated from the petitioner. For one thing, it is unclear who actually brought the plastic sachets to the crime laboratory for examination. It is likewise unclear who received the confiscated plastic sachets at the PNP Crime Laboratory or what happened to the specimens after the initial field test conducted by SPO1 Usi. This is particularly relevant, considering that the confirmatory laboratory examination – the *more reliable* test compared to the initial field test⁵¹ – was only conducted a day after the alleged seizure of the items.

Similarly, there is no record of who exercised custody and possession of the drug specimens after they were examined by P/Inspt. Clemens and before they were presented before the court.

All told, the totality of these circumstances – the failure to mark the plastic sachets, the discrepancy in the weight, and the uncertainty of the individuals who handled the seized items – broke the chain of custody and tainted the integrity of the *shabu* ultimately presented as evidence before the trial court.⁵² **Given that the prosecution failed to prove the indispensable element of *corpus delicti*, the petitioner must be acquitted on the ground of reasonable doubt.**

⁴⁹ TSN, October 11, 2005, p. 4.

⁵⁰ *Id.*

⁵¹ The initial field test was conducted by SPO1 Usi, a drug screener/laboratory technician. Such initial field test was subject to the confirmatory test conducted by forensic chemist P/Inspt. Clemens. *Id.* at 11.

⁵² *Supra* note 40, at 134-135.

Criminal Case No. 04-712

The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 of RA No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia *fit or intended* for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

In the present case, there is no evidence showing that the aluminum foil, tube, and lighters found in the petitioner's house were fit or intended for introducing any dangerous drug into the body. The prosecution did not bother to show that there were traces of *shabu* on any of these alleged drug paraphernalia. In fact, it appears that the only evidence that the prosecution offered to prove this charge is the existence of the seized items by themselves.

For the prosecution's failure to prove that the items seized were intended to be used as drug paraphernalia, the petitioner must also be acquitted of the charge under Section 12 of RA No. 9165. Indeed, we cannot convict the petitioner for possession of drug paraphernalia when it was not proven beyond reasonable doubt that these items were used or intended to be used as drug paraphernalia.

WHEREFORE, premises considered, we hereby **REVERSE** and **SET ASIDE** the September 25, 2009 Decision and the December 8, 2009 Resolution of the Court of Appeals in CA-G.R. CR No. 31602. Petitioner Luis Derilo y Gepoleo is hereby **ACQUITTED** of the charge of violation of Sections 11 and 12, Article II of RA No. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt. His immediate **RELEASE** from detention is hereby ordered unless he is being held for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from his receipt of this Decision.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



MARIANO C. DEL CASTILLO

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice



MARVIC M.V.F. LEONEN

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Associate Justice

Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice