

SECOND DIVISION

[G.R. No. 242273, November 23, 2020]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICO MAZO Y YBAÑEZ AND JOEY DOMDOMA Y ABLETES, ACCUSED-APPELLANTS.

RESOLUTION

LOPEZ, J.:

The conviction of Nico Mazo y Ybañez (Nico) for illegal sale and possession of dangerous drugs and Joey Domdoma y Abletes (Joey) for illegal sale of dangerous drugs, is the subject of review in this Motion for Reconsideration^[1] assailing the Court's Resolution^[2] dated July 15, 2019, which affirmed the Court of Appeals' (CA) Decision^[3] dated May 16, 2018 in CAG.R. CR-HC No. 09348.

ANTECEDENTS

On January 12, 2017, the Station Anti-Illegal Drugs-Special Operations Task Group planned a buy-bust operation against Nico based on an information that he is selling drugs in Barangay La Paz, Makati City. After the briefing, PS/Insp. Valmark C. Funelas designated PO1 Andrew O. Amante (PO1 Amante) as poseur-buyer, and PO1 Nathaniel Maculi and PO1 Stephanie Limjap (PO1 Limjap), as back-ups.^[4]

About midnight the following day, the entrapment team together with the informant went to Sunrise Street, Barangay La Paz, Makati City. Thereat, they saw two men and one woman standing at the street. The informant told PO1 Amante, "[s]ir *yung matangkad na bata*[,] *si Nico yun, yung dalawang kasama nya*[,] *bata nya yun*." The informant then introduced PO1 Amante to Nico as his friend who would buy P500.00 worth of *shabu*. Thus, Nico ordered his companions and said, "*Joey kunin mo ang pera*[,] *bigay mo kay Joy*." Accordingly, PO1 Amante gave the buy-bust money to Joey who handed it to Joy.^[5] Thereafter, Nico retrieved from his left pocket three plastic sachets containing white crystalline substance. Nico picked one sachet and uttered, "*Joey, bigay mo 'to kay pare ko*." Joey got the sachet (later marked with "NICO"), and handed it to PO1 Amante. At that moment, PO1 Amante scratched his cheek which served as the pre-arranged signal that the transaction has been consummated.^[6]

The rest of the team rushed in and arrested Nico, Joey and Joy. After frisking the suspects, PO1 Amante recovered from Nico two plastic sachets containing white crystalline substance (later marked with "NICO-1" and "NICO-2"), while PO1 Limjap found from Joy the buy-bust money. The police officers proceeded to the *barangay* hall where they conducted an inventory and photograph of the seized items in the presence of Barangay Kagawad Christopher Cabo.^[7] After investigation, the suspects were identified as Nico Mazo y Ibanez @ "Nico," Joey Domdoma y Abletes @ "Joey," and Mary Joy Garcia y Vitug @ "Joy."^[8]

Afterwards, PO1 Amante personally delivered the confiscated items to PCI Ofelia Lirio Vallejo of the Southern Police District Crime Laboratory Office for examination. [9] The examination of the substance yielded positive results for methamphetamine hydrochloride. [10] Nico, Joey and Joy were then charged with violations of Sections (Sec.) 5 and 11, Article II of Republic Act (RA) No. 9165 [11] before the Regional Trial Court (RTC), to wit:

[Criminal Case No. R-MKT-17-00179-CR for illegal sale of dangerous drugs against Nico, Joey and Joy]

On the 13th day of January 2017, in the city of Makati, the [sic] Philippines, accused, mutually helping and confederating with one another, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, distribute and transport zero point twelve (0.12) gram of Methamphetamine Hydrochloride, a dangerous drug, in consideration of the amount of Php500.

CONTRARY TO LAW. [12]

[Criminal Case No. R-MKT-17-00180-CR for illegal possession of dangerous drugs against Nico]

On the 13th day of January 2017, in the city of Makati, the [sic] Philippines. accused, mutually helping and confederating with one another, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in their possession, direct custody and control three (3) small heat-sealed plastic transparent sachets containing a total of zero point twenty-two (0.22) gram of Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW. [13]

Nico, Joey and Joy denied the accusations. Nico claimed that he was with Joy sleeping inside their house when several men barged in and brought them to the police station. [14] On the other hand, Joey narrated that he was on his way to buy food when a policeman arrested him. [15]

On March 29, 2017, the RTC convicted Nico and Joey of illegal sale of dangerous drugs. Also, it held Nico guilty of illegal possession of dangerous drugs. The RTC gave credence to the prosecution's version as to the transaction that transpired between them and the poseur-buyer. However, Joy was acquitted, [16] thus:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. R-MKT-17-0[0]179-CR, the court finds accused, Nico Mazo y Ybanez and Joey Domdoma y Abletes, GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II. R.A. No. 9165 and sentences each of them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos

([P]500,000.00). On the other hand, the court ACQUITS their co-accused, Mary Joy Garcia y Vitug of the offense charged on reasonable doubt.

2. In Criminal Case No. R-MKT-17-00180-CR, the court finds accused Nico Mazo y Ybanez, GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos ([P]300,000.00).

x x x x

SO ORDERED.^[17]

Aggrieved, Nico and Joey elevated the case to the CA docketed as CA-G.R. CR-HC No. 09348. They argued that no actual buy-bust operation transpired and that they were framed-up. Moreover, the apprehending officers did not comply with the chain of custody requirement.^[18] On May 16, 2018, the CA affirmed the RTC's findings and ruled that the prosecution preserved the integrity and evidentiary value of the dangerous drugs, thus:

From the testimony of PO1 Amante, the prosecution established that he had the custody of the drug seized from accused-appellants from the moment they were arrested, during the time that they were transported to the police station, and up to the time that the drug was submitted to the crime laboratory for examination. The identification of the seized items in court by the same witness, as well as all the other documentary evidence (except the *Inventory Receipt*) and the testimony of the forensic chemist, who examined the subject drugs and personally brought the said illegal drugs to the trial court, were also stipulated by the parties. It is therefore safe to conclude that, to the unprejudiced mind, the testimonies show without a doubt that the evidence seized from the accused-appellant at the time of the buy-bust operation was the same one tested, introduced, and testified to in court. As aptly ruled by the trial court:

The unbroken chain of custody was established in the instant cases through the following link[s]: (1) PO1 Andrew Amante recovered and marked the sachets containing white crystalline substance with "NICO", "NICO-1", "NICO-2"; (2) a request for laboratory examination of the seized items was signed by PO3 Voltaire Esguerra, the investigator on case to whom the subject pieces of evidence were presented by PO1 Amante after the inventory; (3) the delivery by PO1 Andrew Amante of the same items to the Southern Police District Crime Laboratory to PCI Ofelia Lirio Vallejo who received the same from Amante; [4] Physical Science Report No. D-103-17 was prepared by PCI Ofelia Lirio Vallejo which confirmed after due examination that the marked items seized from the accused were shabu; and [5] the eventual presentation and identification of the items which were brought officially to the

court by PCI Ofelia Lirio Vallejo and marked as Exhibit "V" to "X".

X X X X

WHEREFORE, the appeal is DENIED. The *Decision* dated March 29, 2017 of the Regional Trial Court, Branch 65, Makati City, in Criminal Case Nos. R-MKT-17-00179-CR and R-MKT-17-00180-CR, is hereby affirmed.

SO ORDERED.^[19]

On July 15, 2019, we dismissed the appeal of Nico and Joey for their failure to show how the CA committed any reversible error. Aggrieved, they sought a reconsideration arguing that the police officers did not observe the proper handling and custody of the seized items.

RULING

We acquit.

In illegal sale and possession of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offenses and the fact of its existence is vital to a judgment of conviction.^[20] Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.^[21] Indeed, 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.^[22] Here, the records reveal a broken chain of custody.

The first stage in the chain of custody is the marking of dangerous drugs which is indispensable in the preservation of their integrity and evidentiary value. The marking operates to set apart as evidence the dangerous drugs from other materials, and forestalls switching, planting, or contamination of evidence. The succeeding handlers of dangerous drugs will also use the marking as reference.^[23] In *People v. Baculi*,^[24] this Court ruled that the authorities did not comply with the chain of custody requirement absent definite statement as to where the marking of the seized items took place. In that case, the joint affidavit of the arresting officers and their testimonies failed to point the actual place of marking. In this case, the prosecution, likewise, failed to account the details on how the confiscated items were marked. PO1 Amante testified that he marked the sachet of *shabu* he bought with "NICO," and the two sachets he recovered during frisking with "NICO1" and "NICO-2." Yet, there was no showing where and when the seized drugs were marked. PO1 Amante simply stated in his affidavit that the drugs were "*later marked*"^[25] without providing the details surrounding the initial handling of the drugs. Neither was the issue clarified during PO1 Amante's testimony in open court. In other words, the place of marking remains unknown. Corollarily, lacking material details regarding the marking of the seized drugs, the prosecution failed to remove any suspicion of tampering, switching, or planting of evidence.