

## SECOND DIVISION

[ G.R. No. 199644, June 19, 2019 ]

**ANTONIO JOCSON Y CRISTOBAL PETITIONER, VS. PEOPLE OF  
THE PHILIPPINES RESPONDENT.**

### DECISION

**LAZARO-JAVIER, J.:**

#### The Case

This petition for review on certiorari<sup>[1]</sup> assails the following dispositions of the Court of Appeals in CA-G.R CR No. 32331, viz.:

- a) Decision<sup>[2]</sup> dated April 29, 2011 affirming petitioner's conviction for violation of Section 11 of Republic Act No. (RA) 9165;<sup>[3]</sup> and
- b) Resolution<sup>[4]</sup> dated November 23, 2011 denying petitioner's motion for reconsideration.

#### The Proceedings Before the Trial Court

##### The Charge

By Information dated June 22, 2004, petitioner was charged with violation of Section 11, Article 11, of RA 9165, thus:

That on or about the 16<sup>th</sup> day of June 2004, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully, feloniously, and knowingly have in his possession, custody and control one (1) small heat-sealed transparent plastic sachet containing 0.05 gram of white crystalline substance which was found positive for Methamphetamine Hydrochloride, commonly known as "shabu", a dangerous drug, without the corresponding license and prescription.

Contrary to law.<sup>[5]</sup>

The case was raffled to the Regional Trial Court (RTC)- Branch 210, Mandaluyong City.

On arraignment, petitioner pleaded *not guilty*.<sup>[6]</sup>

At the pre-trial, the prosecution and the defense stipulated on the trial court's jurisdiction, the identity of the accused, and the due existence of the prosecution's documentary exhibits.<sup>[7]</sup>

During the trial, PO2 Robin Rosales Molina testified for the prosecution. On the other hand, petitioner and Annaliza Jocson testified for the defense.

### **The Prosecution's Version**

On June 16, 2004, while PO2 Molina was on duty at the Station Anti Illegal Drugs - Special Operations Task Force (SAID-SOTF), he received an informant's report that a certain "Tony" was peddling illegal drugs along Daang Bakal Street, Barangay Old Zaniga, Mandaluyong City.<sup>[8]</sup>

Acting on the report, he alerted his team and together, they devised a buy-bust operation to apprehend "Tony" *in flagrante delicto*. PO2 Molina was designated as team leader and poseur-buyer; and PO1 Joseph Espinosa, PO1 Salvador Del Mundo, and PO1 Jefferson Gonzales, as back-up. The police submitted a Pre-Operation/Coordination form to the Philippine Drug Enforcement Agency (PDEA).<sup>[9]</sup>

The team proceeded to Daang Bakal Street around 1 o'clock in the afternoon. The informant accompanied PO2 Molina and introduced him to "Tony" as a friend. They conversed for about an hour but PO2 Molina and the informant were unable to convince "Tony" to sell them Php100.00 worth of *shabu*. Instead, "Tony" pulled out a small plastic sachet containing white crystalline substance from a towel. "Tony" informed the two he would use it for himself since it was his last one. PO2 Molina reacted and disclosed to "Tony" his real identity as police officer.<sup>[10]</sup>

"Tony" initially thought he was being pranked. But as soon as he realized it was real, he tried to escape but it was too late. PO2 Molina held on to him until the back-up arrived. The team then arrested "Tony" and apprised him of his constitutional rights.<sup>[11]</sup>

PO2 Molina immediately took custody of the plastic sachet containing white crystalline substance. Together with "Tony", the team headed back to the precinct. There, "Tony" was booked and detained. The seized plastic item was turned over to PO1 del Mundo, a member of the buy-bust team and the designated investigator.<sup>[12]</sup>

During the investigation, the police learned that the real name of "Tony" was Antonio Jocson y Cristobal, herein petitioner. In the presence of PO2 Molina, the investigating officer marked the seized item with petitioner's initials "ACJ."<sup>[13]</sup>

SPO3 Rodel M. Castalone formally requested the PNP Eastern Police District Crime Laboratory for clinical analysis of the white crystalline substance contained in the plastic sachet. PSI/Forensic Chemical Officer Annalee Ramos Forro reported that the white crystalline granules weighing 0.05 gram tested positive for methamphetamine hydrochloride or *shabu*.

On cross, PO2 Molina clarified that the surname of "Tony" was never mentioned in the Pre-Operation/Coordination submitted to the PDEA. He also admitted that the form did not reflect any buy-bust operation, but only a planned surveillance on "Tony."<sup>[14]</sup> PO2 Molina further admitted that his team did not prepare an inventory of the confiscated item, nor take photographs of the same.<sup>[15]</sup> He explained though

that the seized items were recorded in their logbook and mentioned in their Spot Report.<sup>[16]</sup>

PSI Porro's testimony was dispensed with since the parties had already stipulated on her expertise and qualifications, the crime laboratory's receipt of the request for laboratory examination and the accompanying specimen to be tested, the fact of examination of the specimen, the existence of the Physical Science Report, the results of the chemical examination, and the weight of the specimen.<sup>[17]</sup>

The prosecution offered in evidence the *Sinumpaang Salaysay* of PO2 Molina, the Pre-Operation/Coordination form submitted to the PDEA, Spot Report, the Arrest Report, the Request for Laboratory Examination, and the Physical Science Report.<sup>[18]</sup>

### **The Defense's Evidence**

Petitioner denied the charge and claimed framed-up. He testified that around 5 o'clock in the afternoon, he was on his way home when a Starex van stopped before him. A man alighted from the van and put his arm around his neck. The man and two others forced him into the van. He identified one of them as PO2 Molina.<sup>[19]</sup>

He was brought to the Drugs Enforcement Unit (DEU) office. He got frisked twice, but nothing illegal was found in his possession.<sup>[20]</sup> He was detained at the DEU for two days. PO2 Molina and his companions then started extorting money from him in exchange for his liberty. He asked why he was being detained. The police replied he was involved in the illegal drug trade. PO2 Molina took out a small plastic sachet from his drawer and said it came from him. Petitioner was subsequently subjected to inquest.<sup>[21]</sup>

On cross, petitioner testified that the arresting officers instructed him to call his sister Annaliza to visit him. Annaliza arrived at the DEU and talked to the police officers. He did not hear their conversation.<sup>[22]</sup>

Annaliza corroborated petitioner's testimony. She testified that she received a call from petitioner asking her to proceed to the DEU. PO2 Molina demanded from her Php20,000.00 for her brother's liberty. She failed to produce the money because she did not have a regular job.<sup>[23]</sup>

### **The Trial Court's Ruling**

As borne by its Decision<sup>[24]</sup> dated November 12, 2008, the trial court rendered a verdict of conviction, viz.:

WHEREFORE, finding accused Antonio Jocson y Cristobal guilty beyond reasonable doubt of the offense of Violation of Section 11, Art. II of R.A. 9165, he is hereby sentenced to suffer an imprisonment of Twelve (12) Years and One (1) Day, to pay a fine of Three Hundred Thousand Pesos (Php300,000.00) and to pay the cost.

The accused shall be credited with the preventive imprisonment that he

has undergone for the period from June 16, 2004 up to the time before he started serving sentence in his other case before Br. 214 docketed as Criminal Case No. MC04-8163-D on November 9, 2006.

The evidence in this case which is one (1) plastic sachet containing Methamphetamine Hydrochloride or commonly known as shabu, a dangerous drugs (Exh. "H-1-a") contained in a bigger plastic sachet with marking "ACJ" (Exh. "H-1 ") is ordered confiscated in favor of the government.

Upon finality of this decision, the Branch Clerk of Court is directed to turn over the aforesaid evidence to the PDEA to be disposed of in accordance with law, the receipt by the PDEA to be attached to the records of this case.

SO ORDERED.<sup>[25]</sup>

The trial court ruled that as between the testimony of PO2 Molina, on one hand, and the testimonies of petitioner and his sister, on the other, the former was more worthy of belief. It upheld the entrapment operation on petitioner and rejected the latter's defense of denial.

### **The Proceedings Before the Court of Appeals**

On appeal, petitioner faulted the trial court for rendering a verdict of conviction despite the buy-bust team's alleged procedural lapses in conducting the entrapment operation and the prosecution's failure to establish the *corpus delicti*.<sup>[26]</sup>

In refutation, the Office of the Solicitor General (OSG) through Senior State Solicitor Maria Hazel P. Valdez-Acantilado and Associate Solicitor Mercedita L. Flores defended the verdict of conviction. It argued that PO2 Molina's testimony satisfactorily established that petitioner was caught *in flagrante delicto* in possession of *shabu*. The laboratory results supported this conclusion. PO2 Molina was not shown to have been impelled by improper motive to falsely testify against petitioner. The presumption of regularity prevailed over petitioner's self-serving defense of frame-up.<sup>[27]</sup>

### **The Court of Appeals' Ruling**

The Court of Appeals affirmed through its assailed Decision dated April 29, 2011.<sup>[28]</sup> It concluded that the operation was not impelled by reasons other than the legitimate desire of the police to curb drug use and abuse in the area. It further credited the officers concerned with the presumption of regularity in the performance of their official duty.<sup>[29]</sup> Too, it held that the absence of the required inventory and photograph was not fatal to the cause of the prosecution. For despite these procedural deficiencies, the chain of custody appeared to have been uninterrupted. There was no uncertainty that the plastic sachet containing *shabu* marked by PO1 del Mundo and that submitted to and tested at the crime laboratory and finally offered in court was the same item seized from petitioner.<sup>[30]</sup>

Petitioner's motion for reconsideration was denied through Resolution dated

November 23, 2011.

## The Present Petition

Petitioner now urges the Court to exercise its discretionary appellate jurisdiction to review and reverse the verdict of conviction. He vigorously asserts that the required chain of custody was breached many times. *One*, the marking of the seized item was not done in his presence. *Two*, no photograph and inventory of the item were done in his presence nor in the presence of any elective official and representatives from the media and the Department of Justice. *Three*, the police officer who brought the item to the PNP crime laboratory was not presented as witness.<sup>[31]</sup>

The OSG, through Assistant Solicitor General Ma. Antonia Edita C. Dizon, and Associate Solicitor Mercedita L. Flores argues that the petition raises factual issues which the Court may no longer review *via* a petition for review on certiorari.<sup>[32]</sup> Although conceding that the chain of custody here was not perfect, the OSG maintains that the identity, integrity, and evidentiary value of the seized drug had been duly preserved.<sup>[33]</sup>

## Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the marking, inventory, and photograph of the seized item?

## Ruling

We acquit.

Petitioner is charged with unauthorized possession of dangerous drugs allegedly committed on June 16, 2004. The applicable law is RA 9165 before its amendment in 2014.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.<sup>[34]</sup>

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:<sup>[35]</sup> **first**, the seizure and marking 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.<sup>[36]</sup>

This is the chain of custody rule. It 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.<sup>[37]</sup>