

## THIRD DIVISION

[ G.R. No. 220456, June 10, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GAJIR  
ACUB Y ARAKANI A.K.A. "ASAW," ACCUSED-APPELLANT.**

### DECISION

**LEONEN, J.:**

State agents must strictly comply with the legal safeguards established in Section 21 of Republic Act No. 9165, as amended, for the custody and disposition of seized illegal drugs, to ensure that the evidence was not tampered with, substituted, or planted. For the saving clause in Section 21 to apply, the prosecution must prove beyond reasonable doubt that noncompliance was justified and that the integrity and evidentiary value of the seized item were preserved.

This Court reviews the March 16, 2015 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR HC No. 01003-MIN, affirming the conviction of accused-appellant Gajir Acub y Arakani a.k.a. "Asaw" (Acub) for violation of Section 5 of the Comprehensive Dangerous Drugs Act.

In an Information dated February 11, 2005, Acub was charged with selling a dangerous drug to an undercover police officer during a buy-bust operation:

That on or about February 10, 2005, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully and unlawfully, sell and deliver to PO2 Ronald Canete Cordero, member of the PNP, Anti-Illegal Drugs Special Operation Task Force (AIDSOTF), who acted as poseur buyer, one (1) pc. heat sealed transparent plastic sachet containing white crystalline substance weighing 0.0188 gram, which when subjected to qualitative examination gave positive result to the test for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), accused knowing the same to be a dangerous drug, in flagrant violation of the above-mentioned law.

CONTRARY TO LAW.<sup>[2]</sup>

Upon arraignment, Acub pleaded not guilty to the charge against him. Trial on the merits ensued, with the prosecution presenting three (3) police officers as its witnesses and the defense presenting Acub and his wife, Intan Acub (Intan), as its witnesses.<sup>[3]</sup>

The prosecution evidence established that at about 1:00 p.m. on February 10, 2005, a confidential informant tipped Senior Police Officer 1 Amado Mirasol (SPO1 Mirasol)

of the Zamboanga City Police Station that a certain Asaw, later identified as Acub, had been selling illegal drugs at Ayer Village. SPO1 Mirasol informed Chief Police Inspector Ibrahim Jambiran (Chief Inspector Jambiran) of the tip, and the latter planned a buy-bust operation against Asaw.<sup>[4]</sup>

Chief Inspector Jambiran directed PO2 Ronald Cordero (PO2 Cordero) to act as the poseur-buyer, with PO3 Ajuji as back-up.<sup>[5]</sup> Chief Inspector Jambiran gave PO2 Cordero a P500.00 bill, which the latter then marked with his initials.<sup>[6]</sup>

The informant and PO2 Cordero then rode a motorcycle to Ayer Village. PO3 Ajuji followed on another motorcycle, while the rest of the police officers rode a white service van.<sup>[7]</sup>

Upon arriving at Ayer Village, PO2 Cordero and the informant walked toward a small alley, where they then saw Asaw. The informant talked to Asaw and pointed to PO2 Cordero as a buyer. When Asaw asked for the money, PO2 Cordero gave him the marked P500.00 bill.<sup>[8]</sup>

With the payment in hand, Asaw went into a house and came out a few minutes later with a plastic sachet containing white crystalline substance, which he handed over to PO2 Cordero. The police officer examined the plastic sachet, after which he folded his lower shirt sleeve—the pre-arranged signal that the sale had been consummated.<sup>[9]</sup>

As PO2 Cordero grabbed Asaw's arm and introduced himself as a police officer, PO3 Ajuji rushed to the scene and searched Asaw for weapons and the marked bill. He then informed Asaw of his constitutional rights in the Tausug dialect, before bringing him to the police station.<sup>[10]</sup>

At the police station, PO2 Cordero marked the seized sachet with his initials before turning it and Asaw over to PO3 Arlan Delumpines (PO3 Delumpines).<sup>[11]</sup>

PO3 Delumpines then marked the sachet with his own initials, prepared a request for laboratory examination, and delivered the request and the seized sachet to the Regional Crime Laboratory Office.<sup>[12]</sup> At about 8:20 p.m., PO1 Joel Bentican received the request with the sachet, and turned them over to Police Inspector Melvin Ledesma Manuel (Inspector Manuel) at 2:00 a.m. the following day.<sup>[13]</sup>

Later, at around 6:00 a.m., Inspector Manuel examined the specimen and found it positive for methamphetamine hydrochloride or shabu. He summarized his findings in a Chemistry Report.<sup>[14]</sup>

In his defense, Acub, a pedicab driver, testified that on February 10, 2005, he was at home resting after he and his wife, Intan, had gone to the pawnshop earlier that morning to pawn her earrings. Later, at around 1:00 p.m., he went outside to buy food. On his way back, Acub was suddenly stopped by two (2) men and one (1) woman. One (1) of the men restrained him, while the other poked a gun at him and asked if he had money. After Acub denied having money, they all brought him to his house.<sup>[15]</sup>

Inside his house, Acub saw his wife crying while three (3) other persons searched his house for shabu. When they found nothing, all six (6) strangers then brought Acub to the police station.<sup>[16]</sup>

Intan corroborated her husband's testimony. She testified that while her husband was outside buying food, three (3) police officers in civilian clothes suddenly entered and searched their house without a search warrant. They left after finding nothing, but soon returned with more police officers and Acub, who had his hand cuffed and was beaten up by the police officers.<sup>[17]</sup>

The police officers then asked Intan to produce the shabu, but she denied having any. When they asked her to just give them money instead, she also denied having it.<sup>[18]</sup>

Intan later visited Acub at the police station, where she was told that she had to pay P50,000.00 for her husband's release. She told the officer that she did not have the money for her husband's freedom.<sup>[19]</sup>

The Regional Trial Court, in its Decision promulgated on November 4, 2011,<sup>[20]</sup> found Acub guilty of the crime of illegal sale of dangerous drugs.

Upholding the presumption of regularity in the police officers' official actions, the trial court pointed out that it was "out of sync with human nature"<sup>[21]</sup> for a team of police officers to prey on an impoverished pedicab driver. It also highlighted Acub's admission that prior to the buy-bust operation, he had no misunderstanding with the arresting officers, striking a blow to his frame-up allegations.<sup>[22]</sup>

The trial court likewise brushed aside the lack of an inventory, as the chain of custody of evidence remained unbroken and the evidence was properly identified in court.<sup>[23]</sup>

Acub was sentenced to life imprisonment and to pay a penalty of P500,000.00. The dispositive portion of the Regional Trial Court Decision read:

**WHEREFORE**, in the light of all the foregoing, this Court finds accused GADJIR ACUB Y ARAKANI, a.k.a. "ASAW" **GUILTY** beyond reasonable doubt for violating Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000) without subsidiary imprisonment in case of insolvency.

SO ORDERED.<sup>[24]</sup> (Emphasis in the original)

Acub filed a Notice of Appeal.<sup>[25]</sup> In its May 3, 2012 Resolution,<sup>[26]</sup> the Court of Appeals directed Acub to file his appellant's brief and the Office of the Solicitor General to file its corresponding appellee's brief upon receipt of the appellant's brief. Both parties complied and filed their respective briefs.<sup>[27]</sup>

In its March 16, 2015 Decision,<sup>[28]</sup> the Court of Appeals affirmed the Regional Trial

Court Decision convicting Acub.

The Court of Appeals upheld the Regional Trial Court's findings that the prosecution successfully established all the elements of the illegal sale of a dangerous drug. Furthermore, it affirmed that there were no gaps in the chain of custody.<sup>[29]</sup>

The Court of Appeals opined that the police officers' failure to strictly comply with Article II, Section 21 of the Comprehensive Dangerous Drugs Act was immaterial as the integrity and evidentiary value of the seized shabu were properly preserved.<sup>[30]</sup>

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 04 November 2011 rendered by the Regional Trial Court of Zamboanga City, Branch 13, in *Crim. Case No. 5658 (21352)*, which declares accused-appellant guilty of violation of Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (RA 9165) is hereby AFFIRMED with the MODIFICATION, in that the accused-appellant shall not be eligible for parole.

SO ORDERED.<sup>[31]</sup> (Emphasis in the original)

Thus, Acub filed a Notice of Appeal,<sup>[32]</sup> which was given due course by the Court of Appeals in its July 14, 2015 Resolution.<sup>[33]</sup>

In its November 25, 2015 Resolution,<sup>[34]</sup> this Court notified the parties that they may file their respective supplemental briefs. However, as noted in this Court's April 6, 2016 Resolution,<sup>[35]</sup> both parties manifested<sup>[36]</sup> that they were dispensing with the filing of a supplemental brief. Instead, they would adopt their Briefs filed before the Court of Appeals.

Accused-appellant alleges that the prosecution failed to show strict compliance with Section 21 of the Comprehensive Dangerous Drugs Act. The police officers have not marked, inventoried, and photographed the sachet of shabu upon seizure and in the presence of the required representatives.<sup>[37]</sup> Furthermore, accused-appellant notes that the prosecution failed to offer a justifiable ground for the officers' noncompliance with Section 21.<sup>[38]</sup>

Additionally, accused-appellant claims that the prosecution failed to substantiate its allegation of a planned buy-bust operation. He points out that the lack of a pre-operation report or blotter in the records raises doubt on whether the buy-bust money was marked, and whether the police officers participated in the supposed operation.<sup>[39]</sup>

Stressing that the prosecution failed to establish an unbroken chain of custody, accused-appellant points out that no other testimony aside from PO2 Cordero's, the poseur-buyer, was presented to prove the alleged sale. Moreover, he states that the prosecution failed to present the confidential informant who supposedly tipped off the police officers. This, he points out, could have shed light on the transaction.<sup>[40]</sup>

Accused-appellant argues that another gap in the chain was created after Inspector Manuel, the forensic chemist, admitted that he did not personally receive the laboratory request with the specimen. He points out that the Chemistry Report Inspector Manuel identified did not bear his name, but that of a certain Nur-in Moderika y Sawadjaan. He insists that all of these circumstances created doubt on the integrity and identity of the sachet of shabu that he supposedly sold to PO2 Cordero.<sup>[41]</sup>

For its part, plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, claims that it was able to prove all the elements of illegal sale of dangerous drugs. It explains that the identities of the buyer and seller, consideration, and object of the sale were established.<sup>[42]</sup> Denying accused-appellant's assertion that the failure to present the marked money was fatal to its case, it argues that in buy-bust operations, the marked money is not an indispensable requirement, but is merely corroborative.<sup>[43]</sup>

Plaintiff-appellee, likewise, denies that noncompliance with Section 21 was fatal to its case since the integrity and evidentiary value of the seized sachet were preserved by the apprehending officers, as shown by the unbroken chain of custody.<sup>[44]</sup>

Finally, plaintiff-appellee maintains that accused-appellant failed to present clear and convincing evidence to overturn the presumption of regularity in the arresting officers' performance of their duties.<sup>[45]</sup>

The sole issue for this Court's resolution is whether or not accused-appellant Gajir Acub y Arakani's guilt was proven beyond reasonable doubt despite noncompliance with the required procedure under Section 21 of the Comprehensive Dangerous Drugs Act, as amended.

Accused-appellant must be acquitted.

To sustain a conviction for the illegal sale of dangerous drugs, it must be proven that a transaction took place and the *corpus delicti* or the illicit drug must be presented into evidence.<sup>[46]</sup>

Although not easily identifiable, the identity of the illicit drug must be clearly established since its very existence is essential to convict an accused. *People v. Jaafar*<sup>[47]</sup> explained:

In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established.

Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a