

THIRD DIVISION

[G.R. No. 180447, August 23, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO GERONIMO Y AGUSTINE, ALIAS "NANDING
BAKULAW", ACCUSED-APPELLANT.**

DECISION

BERSAMIN, J.:

The State, not the accused, has the heavy burden of justifying at the trial the lapses or gaps in the chain of custody. Without the justification, the chain of custody is not shown to be unbroken; hence, the integrity of the evidence of the *corpus delicti* was not preserved. The acquittal of the accused should follow.

The Case

The accused-appellant appeals the decision promulgated on April 27, 2007 in CA-G.R. CR-H.C. No. 01793,^[1] whereby the Court of Appeals (CA) affirmed the judgment rendered in Criminal Case No. 12873-D on August 5, 2005 by the Regional Trial Court (RTC), Branch 151, in Pasig City^[2] pronouncing him guilty beyond reasonable doubt of a violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) as charged.

Antecedents

The CA summed up the factual antecedents in its decision, as follows:

About 2:00 o'clock in the afternoon of September 4, 2003, while PO1 Janet Sabo and SPO4 Manuel Buenconsejo were at their office at the Mayor Special Action Team (MSAT) at the City Hall Detachment, Pasig City, a confidential informant arrived and reported to them that a certain alias Nanding Bakulaw, who was later identified as appellant Fernando Geronimo, was engaged in illegal drug activities victimizing young individuals in Interior Villa Sanchez, Palatiw, Pasig City. SPO4 Buenconsejo relayed said report to their chief, P/Insp. Rodrigo Villaruel, who immediately formed and conducted a briefing for the buy-bust team composed of SPO4 Buenconsejo, PO3 Hunilassan Salisa, PO2 Arturo San Andres, PO1 Aldrin Mariano, PO1 Rolando Panis and PO1 Janet Sabo.

SPO4 Buenconsejo tasked PO1 Sabo to act as the poseur-buyer. The police operatives entered into their police blotter, the marked money which would be used in the buy-bust operation, after which the two pieces of One Hundred Peso (P100) bills were handed to PO1 Janet Sabo. The police investigators then faxed a pre-operational request to Philippine Drug Enforcement Agency of PDEA.

About 3 o'clock that afternoon, the group boarded an L-300 Mitsubishi van and proceeded to Palatiw near M.H. Del Pilar, Pasig City. About 3:10, the police operatives reached the pinpointed place and entered the interior of Villa Sanchez. PO1 Sabo and the informant went ahead of the group, who followed the former to the interior of Villa Sanchez. The informant then pinpointed to PO1 Sabo the appellant, alias Nanding Bakulaw, who was the subject of the buy-bust operation and who was standing five (5) meters away. PO1 Sabo and the informant approached alias Nanding Bakulaw. The informant then called appellant out "Bakulaw!", to which appellant replied, "Pare bakit?" The informant replied, "I-score kami" (We will buy *shabu*). Appellant momentarily stared at them. The asset told appellant that SPO1 Sabo was his companion. Appellant asked the asset how much they intend to buy. The asset replied that he need[ed] P200 pesos worth of *shabu* and at the same time, got the money from his pocket and handed it to appellant. Appellant took the money and placed it inside the pocket of his short pants. Appellant then left and entered his house. After a while, appellant came out carrying a plastic sachet containing white crystalline substance suspected to be *shabu* and handed it to PO1 Sabo, who then ascertained its contents and placed the sachet in her pocket. PO1 Sabo then waved a white face towel indicating to her companions the agreed pre-arranged signal. PO1 Sabo then held short pants (sic) and introduced herself as a police officer. The surprised appellant shoved her but she was able to cling into (sic) appellant's short pants. PO3 Salisa then arrived and helped PO1 Sabo by informing appellant of his constitutional rights. PO1 Sabo placed her initials "JAS" on the confiscated *shabu*. PO1 Sabo also confiscated from appellant the buy bust money consisting of two (2) One Hundred Peso bills which bear the initials "JS" in the upper right portion of the bill.

Appellant was later brought to the Rizal Medical Center for physical examination. Thereafter, appellant was brought to the PNP headquarters. SPO2 Alexander Layno made a letter-request for laboratory examination of the specimen and sent it to the Pasig City Police Station, which were turned over to the PNP Crime Laboratory for examination. Per Chemistry Report No. D1698-o3E, issued by Forensic Chemist Analee R. Forro, the specimen was confirmed positive for methamphetamine hydrochloride, otherwise known as *shabu*, a prohibited drug. As per stipulation of the prosecution and defense counsel, the testimony of Analee R. Forro was dispensed with.^[3]

The accused-appellant was then charged in the RTC with a violation of Section 5 of Republic Act No. 9165 under an information that alleged:

On or about September 4, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully, and feloniously sell, deliver, and give away to PO1 Janet Sabo y Ampuhan, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing four (4) centigrams (0.04 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in

violation of the said law.

CONTRARY TO LAW.^[4]

The accused-appellant pleaded *not guilty* to the information.

At trial, the accused-appellant denied the charges against him, and claimed instead that the arresting police officers had arrived and conducted a search of another house near the house of his sister where he was then watching a show on television with his niece and her three classmates. His version was culled by the CA from his testimony and the testimony of his niece Rosemarie Rosario, as follows:

In the afternoon of September 4, 2003, accused-appellant Fernando Geronimo was watching television at the second floor of the house of his sister. He was accompanied by his niece and the latter's three (3) classmates when all of a sudden, a man and a woman entered the house and proceeded upstairs. Thereafter, a woman (PO1 Sabo) asked the students if they knew "Bombong Taba". In turn, the students asked the accused-appellant if he xxx was "Bombong Taba" to which he xxx answered: "No." After the students informed the woman that they do not know "Bombong Taba" the duo went down.

Moments later, his niece went upstairs and informed him that there were policemen in his nearby house conducting a search. Upon the request of his niece, Fernando proceeded to his house where he noticed that his things were no longer in order. He asked his neighbor the identities of those who entered his house but the latter told him she did not know them. The accused-appellant was about to return inside the house to urinate when he heard a man whom he knew as "Mang Manny" shouted (sic) at him: "Hoy saan ka pupunta". Suddenly, the man approached and poked a gun on (sic) him. He then held back the accused-appellant's shorts, handcuffed him, and brought him to the mayor's office.

At around 1:00 to 2:00 o'clock in the afternoon of September 4, 2003, Rosemarie Rosario was inside their house and cooking for lunch. The accused-appellant together with the classmates of her sister were upstairs watching VCD. When Rosemarie went out of the house to buy something from the nearby store, she met five (5) men and a woman. After she came back from the store, she heard a woman uttered (sic): "hindi nyo ba nakita si Bong Taba, sige halughugin nyo na ang mga kwarto". Thereafter, the woman, who appears to be a lesbian, knocked at their door. When Rosemarie opened the door, the woman asked her the identities of those living there. The woman also asked her the identities of those who were upstairs to which Rosemarie answered: "My uncle and the students". Upon the request of the woman, Rosemarie accompanied her upstairs to see who were there. After she saw the accused-appellant and the students, the woman went downstairs and proceeded outside. Rosemarie on the other hand, peeped through the window where she saw the woman talking with a police officer. Thereafter, the woman's companion searched the house of his uncle. At that instance, Rosemarie went upstairs and informed his uncle about the search prompting the

latter to went (sic) outside. Later, she saw her uncle being handcuffed by the policemen.^[5]

Judgment of the RTC

As stated, the RTC found the accused-appellant guilty as charged on the basis that he had been caught *in flagrante delicto* illegally selling *shabu*, and disposed thusly:

WHEREFORE, the Court finds accused FERNANDO GERONIMO y AGUSTINE @ Nanding Bakulaw GUILTY beyond reasonable doubt of the crime of violation of Sec. 5, Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the penalty of LIFE IMPRISONMENT and to pay a fine of Php500,000.00.

SO ORDERED.^[6]

The RTC observed that the Prosecution had established the elements of illegal sale of *shabu* by showing that the accused-appellant had been caught *in flagrante delicto* during the buy-bust operation;^[7] that the arresting police officers had enjoyed the presumption of regularity in the performance of their official duties; that, in contrast, the accused-appellant's defense of denial had no weight because of his failure to show improper motive on the part of the police officers; that his allegation about his unlawful arrest had been a mere afterthought on his part because he had not thereafter taken any affirmative action against the police officers; and that he had not also called to the attention of the investigating prosecutor the manner of his illegal arrest during the inquest proceedings.^[8]

Decision of the CA

On appeal, the CA upheld the conviction of the accused-appellant, concurring with the RTC that the Prosecution had established that the arrest was pursuant to a lawful buy-bust operation, for which the police officers did not need a warrant. It pointed out that he was estopped from assailing the illegality of his arrest by his failure to file a motion to quash the information before his arraignment, and by his entering a plea of *not guilty* and actively participating in the trial; and that his denial of the charge could not be given credence.

Ruling of the Court

The appeal has merit.

For a successful prosecution of illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, the following elements must be satisfactorily established by the State, namely: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.^[9] In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.^[10] What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.^[11]

It seemed sufficiently established that the policemen had apprehended the accused-appellant immediately after the consummation of the transaction between him and the poseur-buyer. His apprehension in due course led to the recovery of the marked money paid for the one sachet of white crystalline substance.

But grave doubts that infected the chain of custody cannot now be ignored or simply shunted aside as merely trivial. A scrutiny of the record is thus in order.

The procedure to be followed in the seizure and custody of prohibited drugs have been delineated in Section 21 of Republic Act No. 9165, to wit:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;**

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Complementing the foregoing, Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 states:

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(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and 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, further that non-compliance with 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 of and custody over said items;