

SECOND DIVISION

[G.R. No. 190466, April 18, 2016]

LUIS DERILO Y GEPOLEO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

BRION, J.:

We resolve the appeal, filed by accused-appellant Luis Derilo y Gepoleo (*petitioner*), from the September 25, 2009 decision^[1] and the December 8, 2009 resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR No. 31602.

The appealed decision affirmed the January 18, 2008 decision^[3] 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 P300,000.00; 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 P10,000.00.

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 warrant^[5] 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 sachets^[10] 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]

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 (P300,000.00); 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 (P10,000.00) 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]

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 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 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.**

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