

SECOND DIVISION

[G.R. No. 188653, January 29, 2014]

**LITO LOPEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

PEREZ, J.:

Assailed in this petition is the Decision^[1] of the Court of Appeals affirming the conviction of petitioner Lito Lopez by the Regional Trial Court (RTC)^[2] in Criminal Case No. T-3476, which found him guilty beyond reasonable doubt of illegal possession of dangerous drugs.

Petitioner was charged with violation of Section 16, Article III of Republic Act No. 6425, in an Information which reads:

That on or about the 31st day of July, 2000, at 7:30 o'clock in the evening, more or less, at Purok 1, Brgy. Baranghawon, Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess and violate the law, did then and there willfully, unlawfully and criminally have in his possession and control 0.0849 gram of Methamphetamine Hydrochloride, commonly known as "*shabu*", a regulated drug contained in four (4) small transparent packets; four (4) pieces of aluminum foil and one (1) transparent plastic packet, both containing "*shabu*" residue, without authority, license or permit from the government or its duly authorized representatives.^[3]

Upon arraignment, petitioner pleaded not guilty to the crime charged.

The witnesses for the prosecution testified on the following facts:

Senior Police Officer 4 Benito Bognalos (SPO4 Bognalos) was the team leader of the group of police officers assigned to implement the search warrant issued by Judge Arsenio Base of the Municipal Trial Court of Tabaco, Albay, on the house of petitioner located at *Purok 1, Barangay* Baranghawon, Tabaco, Albay. The search group was composed of SPO3 Domingo Borigas (SPO3 Borigas), PO3 Carlos Desuasido (PO3 Desuasido), and PO3 Ferdinand Telado (PO3 Telado) while another group, consisting of SPO1 Venancio Rolda, PO3 Cesar Templonuevo and SPO2 Melchor Codornes, were tasked to secure the perimeter area. SPO4 Bognalos contacted the *barangay* officials to ask for assistance in the conduct of the search.

At around 7:30 p.m. of 31 July 2000, the search team, together with three (3)

barangay officials, went to the house of petitioner and presented the search warrant to him. He eventually relented to the conduct of search. PO3 Desuasido seized a piece of folded paper containing four (4) ¼ x ½ inch transparent plastic packets of white powder, two (2) 2x1-1/2 inch plastic sachets containing white powder, and a crystal-like stone measuring 2 inches in contoured diameter concealed in the kitchen.^[4] SPO3 Borigas found two (2) 2x1-1/2 inch plastic sachets containing white powder in the bathroom. PO3 Telado seized one (1) ¼ x ½ inch plastic packet containing suspected residue of *shabu* inside the master's bedroom. PO3 Telado also recovered one (1) 1x1-1/2 inch plastic sachet containing suspected residue of *shabu*, four aluminum rolls, and a piece of paper partly burned at one end.^[5] Barangay Captain Angeles Brutas witnessed the conduct by the policemen of the search in petitioner's kitchen and saw how the plastic sachets containing the suspected *shabu* were recovered.^[6] *Barangay Kagawad* Leticia Bongon also saw how the policemen found outside the house a white, round, hard and "tawas-like" object in the kitchen and aluminum foils, which were allegedly used as *shabu* paraphernalia.^[7] After the search, the seized items were photographed and a seizure receipt, properly acknowledged by petitioner, was issued. Petitioner was then brought to the police station while the seized plastic sachets were brought by the Chief of Police to the Legazpi City Crime Laboratory for examination.^[8]

Forensic Chemist Police Superintendent Lorlie Arroyo in her Chemistry Report No. D-111-2000,^[9] found that the seized plastic sachets are positive for *methamphetamine hydrochloride* or *shabu*. She likewise testified on her findings.

Testifying on his own behalf, petitioner narrated that at exactly 7:30 p.m. on 31 July 2000, more than ten (10) policemen barged into his house. Petitioner initially asked them for their purpose and he was told that they had a search warrant. Petitioner was not able to take a good look at the search warrant because one Butch Gonzales pushed him aside while the others entered his house. The policemen searched different parts of his house while he was made to sit in the living room by PO3 Desuasido. From where he was seated, he could not see what was happening inside the kitchen or in the bedroom, where policemen allegedly recovered plastic sachets containing *shabu*. He was asked to sign a seizure receipt but refused to do so. After the search, he was taken into custody and brought to the police station.^[10] Salvacion Posadas, petitioner's former common-law partner, was also inside petitioner's house at the time of the search. She corroborated petitioner's testimony that they were not able to witness the search because they were made to sit in the living room. She also claimed that the *barangay* officials did not accompany the policemen in the search inside the kitchen and bedroom.^[11]

On 23 May 2007, the RTC convicted petitioner of the charge of illegal possession of *shabu* in violation of Section 16, Article III of Republic Act No. 6425.

The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered, finding accused Lito Lopez GUILTY beyond reasonable doubt of Violation of Section 16, Article III, Republic Act 6425 and considering the quantity of the methamphetamine hydrochloride seized from the accused, which is

0.0849 gram, and applying the Indeterminate Sentence Law, this Court hereby sentences him to suffer an indeterminate penalty of from four (4) months and one (1) day of *arresto mayor* in its medium period as minimum, to three (3) years of *prision correccional* in its medium period as maximum.

The *Methamphetamine Hydrochloride*, subject matter of this case is forfeited in favor of the government, and the Branch Clerk of Court is directed to turn over the same to the Dangerous Drugs Board for proper disposition, upon finality of this decision.^[12]

In convicting petitioner of illegal possession of *shabu*, the trial court lent more credence to the evidence of the prosecution. The trial court held that the prosecution was able to prove all elements of the crime charged, more particularly, that petitioner was in possession of the *shabu*. The trial court dismissed petitioner's claim that the seized *shabu* was planted by the policemen by explaining that these police officers have no ill-motive to falsely testify against petitioner.

In his Brief filed before the Court of Appeals, petitioner contended that there was an irregularity in the conduct of the search when it was witnessed only by *barangay* officials while petitioner's view from the living room was blocked by a concrete wall partition. Petitioner thus advanced the possibility of indiscriminate search and planting of evidence. Petitioner also questioned the time when the search was conducted. Petitioner pointed out that one Butch Gonzales, who is not a part of the search team, participated in the search and was able to seize a plastic sachet allegedly containing *shabu*. Petitioner averred that the seized items were not delivered to the court which issued the warrant. In addition, petitioner claimed that the police officers did not properly observe the chain of custody rule, such that the pieces of evidence were not properly marked in the house of petitioner but were marked at the police station.

On 31 March 2009, the Court of Appeals affirmed the RTC's Decision convicting petitioner of illegal possession of *shabu*. The appellate court upheld the valid implementation of the search warrant by police officers. According to the appellate court, petitioner was present during the search and his movement was not restricted as he was free to follow the policemen conducting the search. The appellate court considered the time of the search as reasonable. With respect to the argument that the seized items were not delivered to the court, the appellate court observed that said issue was not raised during trial, hence, the objection is deemed waived.

Petitioner filed the instant petition for review on *certiorari* zeroing in on the argument that the identity and integrity of the seized items were not proven beyond reasonable doubt. Petitioner insists that the records were bereft of evidence showing every link in the chain of custody of the seized *shabu*. Petitioner points out that the person in the crime laboratory who allegedly handled the seized items was not presented during the trial and there was no testimony made on the disposition of the alleged *shabu* after its examination by the forensic chemist and prior to its presentation in court. Petitioner also notes that the alleged seized drugs were not immediately marked at the time of the alleged seizure.

In the prosecution of drug cases, it is of paramount importance that the existence of

the drug, the *corpus delicti* of the crime, be established beyond doubt. To successfully prosecute a case involving illegal drugs, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-petitioner.^[13]

In both cases of illegal sale and illegal possession of dangerous drugs, the prosecution must show the chain of custody over the dangerous drug in order to establish the *corpus delicti*, which is the dangerous drug itself.^[14] The chain of custody rule comes into play as a mode of authenticating the seized illegal drug as evidence. It includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe 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. These witnesses 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 possession of the same. Indeed, 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.^[15] This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence and on allegations of robbery or theft.^[16]

The rule requires that the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.^[17]

Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimens will use the markings as reference. 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 at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.^[18]

According to PO3 Telado, all the seized items were marked only at the police station. But when asked who put the markings, PO3 Telado surmised that it was PO3 Desuasido.^[19] Aside from PO3 Telado, no other witnesses testified on the supposed markings. PO3 Desuasido was **not** asked on the witness stand about the markings. When cross-examined how the seized items were handled, SP04 Bognalos testified:

Q: After you have searched and found these sachets containing "*Shabu*" what did you and your party do?