

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALVIN PELAYO FLORES, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Judgment[1] of the Regional Trial Court (RTC), Branch 57, Cebu City dated May 2, 2011 in Criminal Case No. CBU-81137 finding accused-appellant Alvin Pelayo Flores guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (RA) 9165[2] and sentencing him with imprisonment of 12 years and 1 day to 15 years and a fine of P300,000.00.

The Antecedents

Accused-appellant Alvin Pelayo Flores (Flores) was indicted in Criminal Case No. CBU-81137 for violating Section 11, Article 2 of Republic Act 9165 under the following Information, viz.:

That on or about the 3[rd] day of September 2007, at about 7:30 P.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without being authorized by law, did then and there have in his possession and under his control the following:
one (1) heat sealed transparent plastic sachet of white crystalline substance weighing 0.01 gram,

locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[3]

When arraigned, appellant pleaded not guilty to the offense charged.[4]

According to the accounts of the witnesses for the prosecution, on September 3, 2007, at around 7:00 o'clock in the evening, barangay tanod Vicente Baya (Baya) noticed a commotion at corner Palma and Vicente Sotto Streets, Cebu City. Baya approached the area and saw Flores being mauled for allegedly snatching something. Baya brought Flores and the latter's victim to the police station. Thereat, Flores was bodily searched by police officer Armand Pacaña (Pacaña) in the presence of police officers Jasper Nuñez (Nuñez) and Jodan Batucan (Batucan). Pacaña recovered a plastic sachet of suspected shabu from the secret pocket of Flores' pants. Pacaña handed it to Nuñez and the latter marked the same with "APF" representing Flores' initials. A letter request[5] for the examination of the contents of the sachet was prepared. It was delivered by Batucan to the Philippine National Police crime laboratory (PNP crime lab) and the same was received by police officer Sudaria. The specimen was examined by P/Insp. Rendielyn Sahagun (Sahagun) and found positive of methamphetamine hydrochloride per Chemistry Report No. D-902-2007.[6]

Meanwhile, Flores testified for his defense. According to him, on September 3, 2007 at past 9:00 o'clock in the evening, he was arrested by a barangay tanod in the street at Pier 2, Cebu City for snatching a cellphone. After the arrest, the barangay tanod frisked him and recovered only the cellphone. The barangay tanod then brought him and his victim to the police station where the victim forgave him. At the police station, the police frisked him again and found nothing. However, the police subsequently informed him that he would be charged for illegal

possession of shabu.

After the proceedings, Flores was found guilty beyond reasonable doubt of the the crime charged. The dispositive portion of the trial court's Decision reads, viz.:

WHEREFORE, in view of the foregoing, accused Alvin Flores is found guilty beyond reasonable doubt of the offense charged, hence, he is hereby sentenced to suffer the penalties of imprisonment ranging from twelve (12) years and one (1) day to fifteen (15) years and a fine of P300,000.00.

He is credited for the period during his preventive imprisonment.

The packet of shabu is forfeited in favor of the government.

SO ORDERED.[7]

Flores appealed to Us and cited the following errors, thus:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY;

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT DESPITE THE ILLEGAL WARRANTLESS SEARCH;

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

The foregoing errors boil down to the issues of: (1) whether or not Flores' conviction was proper; and (2) whether or not the search on Flores was valid.

Flores questioned the prosecution's failure to observe the procedure in Section 21, Article 2 of RA 9165 in dealing with the seized drug and to properly establish its chain of custody. He contended that the trial court could not cite the presumption of regularity in the police officers' performance of their functions as basis for his conviction since his guilt was not even established beyond reasonable doubt. Flores also assailed the validity of the search made on him on the ground that the preceding arrest was illegal as it was made without a warrant.

This Court's Ruling

The appeal is impressed with merit.

Indeed, Flores' guilt was not proved beyond reasonable doubt. The prosecution failed to establish that the shabu examined by the crime lab forensic chemist, and later presented in court, was the same item allegedly recovered from Flores. In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[8] Evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from appellant; otherwise, the prosecution for possession of illegal drugs under RA No. 9165 fails.[9]

The identification of the drug seized from the accused must be established by a proper chain of custody. This is to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the

movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. In this case, the integrity of the drug allegedly recovered from Flores was fatally compromised.

First, Batucan never testified of any precaution done to preserve the identity and ensure the integrity of the specimen after confiscating it from Flores. Batucan merely narrated that it was marked and thereafter brought to the crime lab for examination.[10] However, he made no mention if the specimen was properly sealed by Nuñez after the same was marked.

Second, the procedure required under Section 21[11] of RA No. 9165 directing the physical inventory and photographing of the seized item in the presence of the accused, media and DOJ representatives, and any elected public official was not observed; and the disregard of the procedure was not even on justifiable grounds. Batucan's testimony on this matter is quoted, to wit:

Q:

No separate inventory?

A:

No, ma'am.

Q:

No picture taken?

A:

No, ma'am.

xxx xxx xxx

Q:

Do you know why no pictures were taken?

A:

Because during that time[,] we have not practiced getting some inventory, pictures and report from the media, DOJ representative, not like when we implemented a search warrant.

xxx xxx xxx

Q:

Do you have a camera in your station for that purpose?

A:

Not functional, your Honor.[12]

Third, the prosecution's evidence did not establish an unbroken chain of custody. During the proceedings, the testimony of forensic chemist Sahagun was dispensed because the parties agreed to just stipulate on some facts. However, the stipulations did not actually aid the prosecution as it only highlighted the gaps in the chain, thus:

Pros. Lapinid:

The intended witness for the State is P/Insp. Rendielyn Sahagun is currently on study leave but I have already the evidence with me and if the defense is willing to stipulate with regards to the testimony of Insp. Sahagun

then I will appreciate it very much.

Atty. Harayo:

We will stipulate Your Honor.

Court:

Proceed.

Pros. Lapinid:

Will the defense admit that the PNP Crime Laboratory through Police officer Sudaria received a letter request from Police Station 3 of Cebu City Police Office, dated September 3, 2007 for the examination of one (1) plastic pack of white crystalline substance marked "AF";

Atty. Harayo:

Admitted your Honor.

Pros. Lapinid:

That the specimen attached to the letter request was examined by P/Insp. Sahagun of the PNP Crime Laboratory 7;

Atty. Harayo:

Admitted your Honor.

xxx xxx xxx

Pros. Lapinid:

That the examination by Sahagun of the subject specimen yielded positive results for the presence of methamphetamine hydrochloride, a dangerous drug;

Atty. Harayo:

Admitted.

xxx xxx xxx

COURT:

Any counter proposals for admission?

(to defense)

Atty. Harayo:

The defense would like to stipulate that the witness (Sahagun) has no personal knowledge as to the circumstances leading to the recovery of subject specimen;

Pros. Lapinid:

Admitted.

Atty. Harayo:

The witness did not personally receive the subject specimen from any of the arresting officers;

Pros. Lapinid:

Admitted.

Atty. Harayo:

That the witness has no personal knowledge as to whether the subject specimen submitted was tampered before the same was actually received by the witness;

Pros. Lapinid:

Admitted your Honor.[13]

What is clear from the stipulated facts is that Sudaria received the letter-request at the crime lab and Sahagun examined the specimen attached to such letter-request. However, there was an obvious break in the chain of custody as it could not be ascertained whether Sudaria was actually the one who turned over the specimen to Sahagun. Since neither of the two crime lab personnel was presented as witness, nobody testified on what happened to the specimen and who handled the same, if there were any other persons who did so, during the time gap between them. There was also no testimony as to who subsequently had custody of the specimen after Sahagun examined it and before this was presented as evidence in court.

In prosecutions involving dangerous drugs, strict compliance with the prescribed procedures is required because of the unique characteristic of illegal drugs, rendering them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[14] In *People vs. Peralta*, [15] the Supreme Court outlined the procedure to be observed so the courts may be assured that the integrity of seized prohibited drugs is preserved from the time of their seizure to the time of their laboratory examination and presentation in court as evidence in the case, thus:

Since the seizing officer usually has to turn over the seized drugs to the desk officer or some superior officer, who would then send a courier to the police crime laboratory with a request that the same be examined to identify the contents, it is imperative for the officer who placed his marking on the plastic container to seal the same, preferably with adhesive tape that usually cannot be removed without leaving a tear on the plastic container. If the drugs were not in a plastic container, the police officer should put it in one and seal the same. In this way the drugs would assuredly reach the laboratory in the same condition it was seized from the accused.

Further, after the laboratory technician has tested and verified the nature of the powder in the container, he should seal it again with a new seal since the police officer's seal had been broken. In this way, if the accused wants to contest the test made, the Court would be assured that what is retested is the same powder seized from the accused.

xxx xxx xxx

If the sealing of the seized article had not been made, the prosecution would have to present the desk officer or superior officer to whom the seizing officer turned over such article. That desk officer or superior officer needs to testify that he had taken care that the drugs were not tampered with or substituted. And if someone else brought the unsealed sachet of drugs to the police crime laboratory, he, too, should give similar testimony, and so on up to the receiving custodian at the crime laboratory until the drugs reach the laboratory technician who examined and resealed it.

The consequences of the police officers' failure to seal the specimen and to comply with Section 21 of RA No. 9165, as well as the manifest gaps or missing links in the chain of the drug's custody, are grave for the prosecution. The lapses produce doubts on the origin of the illegal drug presented in court, thus leading to the

prosecution's failure to establish the corpus delicti.[16] Such failure cannot even be salvaged by the presumption of regularity of official functions. It bears stressing that the presumption only arises in the absence of contradicting details that would raise doubts on the regularity in the performance of official duties. Where the police officers failed to comply with the standard procedure prescribed by law, there is no occasion to apply the presumption.[17]

Since Flores' guilt was not proved beyond reasonable doubt, We are, thus, impelled to reverse his conviction. With this course of action. We no longer find it necessary to delve into the other issue on whether or not the search made on Flores was attended by a constitutional infirmity.

WHEREFORE, the appeal is GRANTED. The Judgment of the Regional Trial Court, Branch 57, Cebu City dated May 2, 2011 in Criminal Case No. CBU-81137 finding Alvin Pelayo Flores guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (RA) 9165 is hereby REVERSED and SET ASIDE.

Alvin Pelayo Flores is ACQUITTED of the crime charged on the ground of reasonable doubt and ORDERED IMMEDIATELY RELEASED from custody, unless he is being held for some other lawful cause. The responsible officer is ORDERED to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Hernando, and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 29-32.

[2] Otherwise known as An Act Instituting The Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act NO. 6425, Otherwise Known As The Dangerous Drugs Act Of 1972, As Amended, Providing Funds Therefor, And For Other Purposes.

[3] Record, p. 1.

[4] See Certificate of Arraignment, record, p. 13.

[5] Record, p. 53.

[6] Record, p. 54.

[7] Rollo, p. 32.

[8] See *People v. Suan*, G.R. No. 184546, February 22, 2010.

[9] See *People of the Philippines v. Denoman*, G.R. No. 171732, August 14, 2009.

[10] See TSN of the testimony of Batucan taken on February 25, 2009, p. 8.

[11] Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs . . . -

(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.

[12] TSN of the testimony of Batucan dated August 12, 2009, pp. 8-9.

[13] See TSN dated April 24, 2008, pp. 2-5.

[14] See People of the Philippines vs. Fermin, et. al., G.R. No. 179344, August 3, 2011.

[15] G.R. No. 173472, February 26, 2010.

[16] See People of the Philippines vs. Kamad, G.R. No. 174198, January 19, 2010.

[17] See Lopez v. People of the Philippines, G.R. No. 184037, September 29, 2009.

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