

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY GARCIA Y AGBAYANI, ACCUSED-APPELLANT.

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

Before Us is an appeal[1] from a Judgment[2] dated 16 April 2012 promulgated by the Regional Trial Court, City of Tuguegarao, Branch 1, in Criminal Case No. 9843, wherein the accused-appellant was found guilty beyond reasonable doubt for Violation of Section 11, Article II of Republic Act No. 9165 or otherwise known as the Comprehensive Dangerous Drugs Act of 2002, the dispositive portion of which reads:

“WHEREFORE, the Court finds the accused JOEY GARCIA Y AGBAYANI GUILTY BEYOND REASONABLE DOUBT of the CRIME OF VIOLATION OF SECTION 11, ARTICLE II of REPUBLIC ACT NO. 9165 otherwise known as the Comprehensive Dangerous Act of 2002, and, applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty of TWELVE (12) YEARS and ONE (1) DAY as Minimum to FIFTEEN (15) YEARS as Maximum and a FINE OF THREE HUNDRED THOUSAND PESOS (P300,000.00).

The bail bond posted by the accused for his provisional liberty is hereby cancelled. Let a warrant of arrest be issued against the accused for his immediate apprehension.

The dangerous drugs presented before the Court is hereby forfeited and confiscated in favor of the government and the Branch Clerk of Court is hereby directed to immediately deliver the said items to the Philippine Dangerous Drugs Agency (PDEA) for proper disposition.

Let a copy this Judgment be furnished to the PNP Tuguegarao City Police Station for its information and guidance.

SO ORDERED.”

The accusatory portion of the Information[3] charging herein accused-appellant, reads:

“That on July 21, 2003, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, said accused JOEY GARCIA y AGBAYANI, without authority of law and without permit to possess dangerous drugs, did then and there willfully, unlawfully and feloniously, possess dangerous drugs with a total weight of 3.37 gms. of Methamphetamine Hydrochloride, commonly known as “SHABU”, as in fact, found in his possession are said dangerous drugs by the apprehending officers along Blumentrit Street, this City that resulted to the apprehension of accused and the confiscation of said dangerous drugs from him.

CONTRARY TO LAW.”

During the 7 January 2004 arraignment, herein accused-appellant pleaded not guilty to the violation charged.[4] Thereafter, Pre-trial was conducted and also terminated on June 9, 2004.

Trial on the merits ensued. The prosecution presented four (4) witnesses, namely: 1) SP02 Reynaldo Viraguas,[5] one of the apprehending officers; 2) SPO1 Edgar Caranguian[6], designated as the poseur buyer during the

buy-bust operation; 3) SP02 Noel Taguiam[7], one of the members of the buy-bust operation team; and 4) Mayra Madria[8], the forensic chemist whose testimony was dispensed with on 12 September 2006 upon defense stipulation on the existence of the Chemistry Report No. D-156-2003 and the alleged specimen which was submitted to her for laboratory examination.

Included as part of the documentary evidence formally offered by the prosecution are the following: 1) Joint Affidavit of SP02 Reynaldo Viraguas, SP02 Noel Taguiam and SP02 Edgar Caranguian;[9] 2) Letter Request for Laboratory Examination;[10] 3) Physical Science Report No. D-156-2003[11]; and 4) the seven (7) plastic sachets containing shabu.

To disprove the prosecution's claim, the defense presented three (3) witnesses, namely: 1) Bernardo Culiuan[12], who was the driver of the tricycle boarded by the accused-appellant during the buy-bust operation; 2) Joey Garcia[13], accused-appellant; and 3) Marcelo Relos[14], who was the coordinator of PDEA and Kill Droga Cagayan.

FACTS OF THE CASE

Version of the Prosecution[15]

"On July 21, 2003, at around 6 o'clock in the morning, a certain Peter Anog was apprehended for drugs by the PNP of Tuguegarao City. During the course of the investigation, Peter Anog revealed that the supplier of shabu was appellant Joey Garcia. Thus, the Chief of Police, P/Supt. Joseph Penaflor, organized a team to conduct a buy-bust operation against Joey Garcia composed of SPO2 Viraguas, SPO1 Caranguian and SPO2 Noel Taguiam. SPO1 Caranguian was designated as the poseur buyer. Peter Anog then contacted Joey Garcia by way of text message and they agreed to meet in front of City Mall along Bonifacio St., Tuguegarao City. Joey Garcia informed Peter Anog that he will board a tricycle in going to the meeting place. The buy-bust team together with Peter Anog boarded a van and proceeded to the place. After a while, a tricycle passed by and Peter Anog disclosed to the police operatives that the passenger of the tricycle was Joey Garcia. The team alighted from the van and SPO1 Caranguian flagged down the tricycle. SPO1 Caranguian and Joey Garcia talked for a while, appellant Joey Garcia identified himself, and, a few moments later, Joey Garcia handed over to SPO1 Caranguian seven (7) pieces of plastic sachets of white crystalline substance. Subsequently, SPO1 Caranguian informed the police operatives that it is positive for drugs and that Joey Garcia was in possession of dangerous drugs. They then brought Joey Garcia as well as the plastic sachets given to him by Garcia to the investigator, PO3 Wilfredo Taguinod. The plastic sachets surrendered by appellant were brought to the PNP Crime Laboratory for examination.

Forensic Chemist PSI Myra Madria of the PNP Regional Crime Laboratory conducted a qualitative examination on the seven (7) plastic sachets of white crystalline substance confiscated from appellant Joey Garcia pursuant to a letter request of the PNP of Tuguegarao City and that per her findings, the specimen submitted yielded "POSITIVE" result to the tests for the presence of methamphetamine hydrochloride, which findings were reduced into writing under Physical Science Report No. D-156-2003."

Version of the Defense[16]

The accused-appellant alleged that in the morning of July 21, 2003, Joey Garcia boarded a tricycle and alighted at the East Central School located at Rizal Street, Tuguegarao City in order to fetch his child who was studying thereat. While in said school, he saw SPO2 Noel Taguiam, SPO2 Arthur Blaquera and SPO1 Edgar Caranguian. Upon seeing them, he voluntarily handed to them seven (7) pieces of plastic sachets of suspected illegal drugs, which he got from Peter Anog. Joey Garcia is in possession of the suspected illegal drugs as he was working as a secret asset and informer of the Intelligence Group of the PNP Narcotics Command to help the members of the police force in curbing illegal drug activities in Tuguegarao City.[17] After voluntarily surrendering the seven (7)

sachets of illegal drugs, he was brought to the police station in Tuguegarao City.

After the prosecution and defense both rested their respective cases, the Regional Trial Court of Tuguegarao City, Branch 1, rendered the assailed Decision[18] on 16 April 2012, finding the accused-appellant guilty beyond reasonable doubt for violation for Section 11, Article II of Republic Act No. 9165, sentencing him to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum and a fine of three hundred thousand pesos (P300,000.00).

Aggrieved by the unfavorable ruling of the trial court, the accused-appellant now comes before this Court and assigns the following errors[19] in his appeal:

I.

THE REGIONAL TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE APPREHENDING TEAM TO COMPLY WITH THE RULE ON THE CHAIN OF CUSTODY AS PROVIDED BY REPUBLIC ACT NO. 9165.

II.

THE REGIONAL TRIAL COURT ERRED IN RULING FOR THE CONVICTION OF THE ACCUSED DESPITE THE PROSECUTION'S FAILURE TO CONCRETELY AND DISTINCTLY ESTABLISH THE EXISTENCE OF ALL THE ELEMENTS FOR THE ALLEGED VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

THIS COURT'S RULING

The defense anchored the instant appeal on its allegation that the prosecution failed to observe the procedure mandated by Section 21 of Republic Act No. 9165 on the handling of the confiscated specimens which created doubt as to the integrity and evidentiary value of the confiscated items.

To begin with, the procedure to be followed in the custody and handling of seized dangerous drugs is outlined in Section 21, paragraph 1, Article II of Republic Act No. 9165 which states that:

(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.

The same procedure is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:

(a) 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: 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.

A thorough perusal of the records of this case shows that accused-appellant admitted having possessed the seven (7) plastic sachets containing shabu with an accumulated mass of 3.37 grams[20], and that he surrendered the

same to the buy-bust team.[21] The accused-appellant also admitted[22] the existence and due execution of the Chemistry Report No. D-156-2003 issued by Forensic Chemist PSI Madria, which found the confiscated sachets containing white crystalline substance positive for methamphetamine hydrochloride. Further, the defense never objected[23] to the presentation of the said sachets as evidence during the course of the trial nor manifested that there were lapses in the procedure that affected their integrity and evidentiary value. The alleged violations of Section 21 of Republic Act No. 9165 were only raised for the first time on appeal.

We agree with the Office of the Solicitor General (OSG) that such failure on the part of the defense to object before the trial court weakened his claim of innocence. Also, the same necessarily led to the conclusion of the proper handling of the said specimens by the police officers from the time of his apprehension up to the time that the same were presented in court.[24]

It has been consistently ruled by the Supreme Court that objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[25] Likewise, if at no time during the trial did the defense question the integrity of the evidence, by questioning either the chain of custody or the evidence of bad faith or ill will on the part of the police and the prosecution in the handling of evidence, or by proof that the evidence had been tampered with, the presumption of regularity in the handling of the exhibits by the public officers concerned and the presumption that they properly discharged their duties should already apply. As the foregoing discussion shows, the integrity of the adduced evidence has never been tainted, so that it should retain its full evidentiary value.[26]

As to the second assigned error, the defense claims that the accused-appellant's possession of the seven (7) plastic sachets containing shabu was authorized by law. He raised the defense that he was an asset of the PNP designated by P/Supt. Reynaldo Sinaon. To bolster this claim, accused-appellant presented as documentary evidence an ID Card signed by P/Supt. Sinaon[27] as well as the testimonial evidence of witness Marcelo Relos.[28]

This Court is not persuaded.

Well-settled is the rule that in a prosecution for illegal possession of a dangerous drug, the following elements must be established: 1) accused-appellant was in possession of an item or an object identified to be prohibited or regulated drug; 2) such possession is not authorized by law; and 3) accused was freely and consciously aware of being in possession of the drug.

In the present case, the accused-appellant failed to sufficiently establish that he is a police asset with authority to possess the seven (7) plastic sachets containing shabu at the time of his apprehension. A careful reading of the Stenographic Notes shows that Marcelo Relos' testimony contradicts rather than supports the claim of the accused-appellant that he was a police asset on July 21, 2003, the time when he was apprehended. Noteworthy at this point is the statement of Marcelo Relos that he became a Drug Watch Coordinator of Tuguegarao PNP only in 2005[29] and that he himself introduced accused-appellant Joey Garcia to Major Rodriguez, former Chief of Police of Tuguegarao City in 2005[30], more or less two years after the apprehension of the accused. Verily, Marcelo Relos could not have introduced accused-appellant to the appropriate police officers prior to 2005 for his appointment as a police agent for Kill Droga. It follows then that in 2003, accused-appellant was not yet a police asset authorized to possess the same sachets of illegal drugs.

As to the documentary evidence presented by accused-appellant particularly the ID Card signed by P/Supt. Sinaon, the same is not accorded weight as evidence considering that the same was not identified by P/Supt. Sinaon himself. Notably, P/Supt. Sinaon was never presented as a witness to authenticate the said ID Card. Further, the ID Card bears no date, thereby further corroding its credibility. Furthermore, no police officer or

government personnel in charge with the designation and appointment of police drug assets was ever presented as witness to prove the claim of the accused-appellant that he was an asset.[31] It also bears stressing at this point the admission of the accused-appellant that he did not have any operation before he was arrested and that he made accomplishments only after his arrest.[32]

Finally, this Court is of the same opinion with the trial court that should accused-appellant indeed had the intention to surrender the dangerous drugs in his possession, he should have proceeded directly to the police station, which is just near the Department of Foreign Affairs, the place where he boarded the tricycle. Were it not for the chanced encounter, no surrender of the dangerous drugs took place.[33]

Based on the foregoing discussion, this Court holds that all the elements of the violation were sufficiently established. We agree with the trial court in its finding that the accused-appellant became an asset of the police only after his arrest and not before. As such, he was not clothed with any legal authority to possess the dangerous drugs when he was found in possession of the same.[34] We cannot point any significant matter after a re-examination of the records of this case for Us to reverse the findings of the trial court.

WHEREFORE, premises considered, the appeal is hereby DENIED. The assailed 16 April 2013 Decision of the Regional Trial Court, Branch 1 of the City of Tuguegarao is AFFIRMED in toto.

SO ORDERED.

Salazar-Fernando (Chairperson) and Bruselas, Jr., JJ., concur.

[1] Rollo, pp. 18-31.

[2] Rollo, pp. 42-51.

[3] Records, p. 1.

[4] Records, p. 57.

[5] TSN, 19 May 2005.

[6] TSN, 27 July 2005; 28 September 2005.

[7] TSN, 17 October 2006.

[8] TSN, 12 September 2006.

[9] Records, p. 6.

[10] Records, p. 13.

[11] Records, p. 9.

[12] TSN, 18 February 2008.

[13] TSN, 10 September 2008.

[14] TSN, 23 February 2009.

[15] Rollo, pp. 68-69.

[16] Rollo, pp. 21-22.

- [17] Ibid.
- [18] Rollo, pp. 42-51.
- [19] Supra, note 17.
- [20] TSN, 10 September 2008, p. 3.
- [21] Ibid.
- [22] TSN, 12 September 2006, p. 3; Rollo, p. 165.
- [23] Ibid.
- [24] Rollo, p. 70.
- [25] People vs. Campomanes, G.R. No. 187241, 8 August 2010.
- [26] People vs. Domado, G.R. No. 172971, 16 June 2010.
- [27] Exhibit “1”, Records, Vol. 2, p. 12.
- [28] TSN, 23 February 2009, pp. 6-7.
- [29] TSN, 23 February 2009, p. 8.
- [30] Ibid.
- [31] Rollo, p. 48.
- [32] TSN, 10 September 2009, p. 8.
- [33] Rollo, p. 49.
- [34] Ibid.

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