

PEOPLE OF THE PHILIPPINES. PLAINTIFF-APPELLEE, VS. RODERICK L. MARTINEZ, ACCUSED-APPELLANT.

Ponente: DIY, J.

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DIY, J.:

This is an appeal from the Judgment[1] dated June 12, 2008 of the Regional Trial Court (RTC) of Cebu City, Branch 57, in Criminal Case No. CBU-68556, finding accused-appellant Roderick L. Martinez guilty of violation of the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the judgment reads:

WHEREFORE, the accused is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of One Million (P1,000,000.00) Pesos.

The plastic pack of shabu is forfeited in favor of the government.

SO ORDERED.

The Antecedents

An Information was filed before the RTC of Cebu City against accused-appellant for violation of Section 5 of R.A. No. 9165, viz:

That on or about the 4th day of February 2004 at about 5:15 P.M. in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer one (1) heat sealed transparent plastic packets [sic] of white crystalline substance weighing 0.10 gram, locally known as “shabu”, containing Methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[2]

Upon his arraignment, accused-appellant, with the assistance of counsel, pleaded not guilty to the crime charged.[3] Thereafter, joint trial on the merits ensued after the termination of the pre-trial conference.

The prosecution presented the following witnesses: SPO2 Nilo Dandan (“Dandan”), SPO1 Benicer Tamboboy (“Tamboboy”), and P/Insp. David Alexander Tan Patriana (“Patriana”). Their testimonies exhibited the following:

On February 4, 2004, the buy-bust team headed by SPO2 Dandan conducted a briefing in order to conduct a buy-bust operation against one Roderick L. Martinez alias “Lotlot” of Sitio Taboy, Barangay Carreta, Cebu City, who was then a subject of surveillance by the police officers. During the briefing, a civilian asset was assigned as poseur-buyer while the rest of the team was tasked to back-up the former. The poseur-buyer was given one (1) P100.00 bill as buy-bust money marked as “BB”. [4]

At around 5:15 o’clock in the afternoon, the buy-bust team along with the poseur-buyer went to the target area. Thereat, the buy-bust team positioned themselves strategically at a distance of about six (6) to seven (7) meters away, where the poseur-buyer and accused-appellant were transacting. From their position, the team, particularly

officers Dandan and Tamboboy, saw the poseur-buyer give the buy-bust money to accused-appellant, who in turn handed over a small plastic containing white crystalline substance. After receiving the package, the poseur-buyer made the pre-arranged signal to the buy-bust team by touching his head to signify that the transaction had already been consummated. The buy-bust team immediately rushed to the scene.[5]

When accused-appellant noticed the approaching policemen, he went inside his house. He was eventually caught and arrested. The buy-bust team apprised accused-appellant of his constitutional rights. Thereafter, accused-appellant was bodily searched by SPO2 Dandan who recovered the buy-bust money from the former. The poseur-buyer turned over the confiscated shabu to SPO2 Dandan. Then SPO2 Dandan and his team brought accused-appellant and the confiscated shabu to the police station. At the police station, the seized shabu was marked "RML-02-04-04" by SPO2 Dandan. The incident was entered in the police blotter.[6]

Subsequently, SPO2 Dandan prepared a letter-request for the PNP Crime Laboratory to make the chemical analysis on the confiscated specimen. After that, the letter-request together with the specimen was submitted to the PNP Crime Laboratory by officers Dandan and Sarmiento, the latter signing the delivery receipt.[7]

P/Sr. Insp. Patriana, chemist of the PNP Regional Crime Laboratory Office who conducted the laboratory test on these substances, confirmed that the specimen marked as "RML-02-04-04" tested positive for the presence of methylamphetamine hydrochloride, a dangerous drug.[8] P/Sr. Insp. Patriana reduced his findings into writing, as contained in Chemistry Report No. D-214-2004.[9]

In his defense, accused-appellant stated that on February 4, 2004, at around 5:15 o'clock in the afternoon, he was sleeping at the second floor of his house. While he was sleeping, he was awakened because certain people went upstairs. He inquired about their identities and they answered that they were policemen. He also asked them why they entered his house without a search warrant or warrant of arrest. They just told him that bringing such warrant was not a trend anymore. Thereafter, the police officers invited him to go with them to the police station for questioning. At the police station, the police officers asked if accused-appellant knew of a certain person selling illegal drugs in the area. He replied in the negative. Despite the fact that accused-appellant had no knowledge of such fact, the policemen told him that if he will not cooperate, they would plant evidence against him.[10]

Furthermore, accused-appellant declared that there are two persons by the name of "Lotlot" in the area, a male and a female. The male "Lotlot" is smaller than he is in build and does not have features similar to his.[11] He does not know if said "Lotlot" was engaged in selling illegal drugs.[12]

On June 12, 2008, the trial court rendered its assailed Judgment,[13] finding accused-appellant guilty of violation of Section 5 of Article II, R.A. No. 9165.

Dissatisfied, accused-appellant filed a Notice of Appeal[14], which was given due course by the court a quo in its Order[15] dated July 9, 2008.

In his Appellant's Brief, accused-appellant assigned the lone error:[16]

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

The Ruling of the Court

We acquit accused-appellant.

After a thorough review of the records of the case and for reasons that will be discussed below, the Court finds that the prosecution failed to establish observance of the chain of custody rule in its favor. As a result, it failed to

prove accused-appellant's guilt beyond reasonable doubt.

In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of R.A. No. 9165 has been complied with or the incident falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165; and (b) there was an unbroken link in the chain of custody with respect to the confiscated items.[17]

Section 21(1), Article II of R.A. No. 9165 prescribes the procedure to be observed by the authorities in handling the illegal drug and/or drug paraphernalia confiscated, 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;

(Emphasis Ours)

The above-stated provision is elaborated on under Section 21(a)[18] of the IRR which provides a saving clause in case the prescribed procedure is not complied with. Under this saving clause, 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.[19]

The chain of custody requirement is essential 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.[20] It is important enough as a concern that Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002[21] specifically defines chain of custody in the following manner:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include 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.[22]

In *People v. Kamad*,^[23] the Supreme Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

In the present case, the prosecution miserably failed to adequately establish the chain of custody of the seized shabu, to wit:

Primarily, the confiscated drug was not marked immediately at the place where accused-appellant was arrested. Also, the marking was not made in the presence of accused-appellant.

Crucial in proving the chain of custody is the marking of the seized dangerous drugs or other related items immediately after they are seized from the accused, for the marking upon seizure is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. Moreover, the value of marking of the evidence is to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, "planting" or contamination of evidence. A failure to mark at the time of taking of initial custody imperils the integrity of the chain of custody that the law requires.^[24]

Additionally, the law requires that the markings should be done in the presence of accused-appellant or the person from whom such items were confiscated or his representative or counsel, and not to anyone else.^[25]

The records of the case show that the apprehending officers did not immediately mark the seized shabu at the crime scene before they proceeded to the police station. PO2 Dandan testified that he marked the confiscated drug at the police station. However, his testimony did not categorically state that the marking of the seized shabu was done in the presence of accused-appellant.

Clearly, for failure of the prosecution to show that the marking was done in the presence of accused-appellant, it would be hard for the Court to ultimately conclude that the one (1) small plastic packet of shabu presented before the trial court was the very same shabu seized from accused-appellant.

Further, there was no physical inventory made or photographs of the seized shabu taken under the circumstances required by Section 21 (1), Article II of R.A. No. 9165 and its IRR. The Supreme Court in the case of *People v. Ancheta*^[26] declared that if the arresting officers are unable to comply with the requirements in R.A. No. 9165, they are under obligation to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience. In the instant case, the police officers failed to show any justifiable reasons for their failure to comply with the procedure laid out in the aforesaid provision of the implementing rules.

Noticeably, the statutory safeguards mandated by law were not observed by the buy-bust team. Henceforth, their failure to comply with the procedure in the chain of custody of the seized shabu raises doubt as to its origin.

Lastly, P/C Insp. Patriana testified only as to the examination of the specimen and the subsequent result it produced. He failed to state who exercised custody and possession of the shabu after he examined the same and before it was presented in court. The prosecution likewise failed to present any evidence showing how the seized shabu was handled, stored and safeguarded pending its presentation in court.

In this regard, Section 3(7) and Section 6(8) of Dangerous Drugs Board Regulation No. 2, Series of 2003, are applicable. They read:

Sec.3(7). Chain of Custody:

Chain of Custody refers to procedures to account for each specimen by tracking its handling and storage from point of collection to final disposal. These procedures require that the applicant's identity is confirmed and that a Custody and Control Form is used from time of collection to receipt by the laboratory. Within the laboratory, appropriate chain of custody records must account for the samples until disposal.

Sec.6(8) Chain of Custody :

A laboratory shall use documented chain of custody procedures to maintain control and accountability of specimens. The date and purpose shall be recorded on an appropriate Custody and Control Form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized collection staff shall be responsible for each specimen in their possession and shall sign and complete the Custody and Control Forms.

The minimum information required on the Custody and Control Form are the following:

- Information identifying the specimen
- Date and time of collection
- Name of testing laboratory
- Name and signatures of all individuals who had custody of the sample during the collection process

As above-quoted, laboratory personnel are required to document the chain of custody each time a specimen is handled or transferred, until the specimen is disposed. The board regulation also requires the identification of the individuals participating in the chain.[27] Here, the prosecution failed to comply with the aforementioned regulation.

Under the circumstances, there was a break in the chain of custody in the confiscation of the shabu. Therefore, putting in doubt that the seized shabu has been altered, substituted or otherwise tampered with, thereby making it a possibility that a person, not in the chain, gained possession of the seized evidence. Stated briefly, the corpus delicti in this case does not exist.

As held by the Supreme Court, "[w]hen moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right." [28]

All in all, We find merit in acquitting accused-appellant for the reason that the prosecution failed to discharge its burden of proving his guilt beyond reasonable doubt due to the substantial gaps in the chain of custody thereof raising reasonable doubt on the authenticity, integrity and evidentiary value of the corpus delicti.

WHEREFORE, in view of the forgoing, the Appeal is GRANTED. The Judgment dated June 12, 2008 is REVERSED and SET ASIDE. Accused-appellant RODERICK L. MARTINEZ is hereby ACQUITTED in Criminal Case No. CBU-68556 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ORDERED IMMEDIATELY RELEASED from detention, unless he is confined for another lawful cause.

Accordingly, the Director of the Bureau of Corrections is ordered to implement this Decision, and to report his action hereon to this Court within ten (10) days from receipt hereof.

Let entry of judgment be made pursuant to Section 1(a), Rule VII of the 2009 Internal Rules of the Court of

Appeals.[29]

SO ORDERED.

Delos Santos, E.L., (Chairperson) and Maxino, P.A.A., JJ., concur.

[1] Record, pp. 119-122.

[2] Ibid., p.1.

[3] Ibid., p. 12.

[4] Tsn dated February 4, 2005, pp. 4-11.

[5] Ibid., pp. 12-14.

[6] Ibid., pp. 14-18.

[7] Tsn dated February 19, 2009, pp. 5-7.

[8] Tsn dated August 12, 2004, pp. 6-8.

[9] Record, p. 90.

[10] Tsn dated April 23, 2008, pp. 4-7.

[11] Ibid., pp. 7-8.

[12] Ibid., p. 15.

[13] Record, pp. 119-122.

[14] Ibid., p. 126.

[15] Ibid., p. 127.

[16] Rollo, p.22.

[17] People vs. Alivio y Oliveros and Dela Vega y Cabbarobias, G.R. No. 177771, May 30, 2011.

[18] “(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.”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.

[19] People v. Domado, G.R. No. 172971, June 16, 2010.

[20] People v. Sanchez, G.R. No. 175832, October 15, 2008 citing Lopez v. People, G.R. No. 172953, April 30,

2008.

[21] Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of R.A. No. 9165 in relation to Section 81 (b), Article IX of R.A. No. 9165.

[22] People v. Roble, G.R. No. 192188, April 11, 2011.

[23] G.R. No. 174198, January 19, 2010.

[24] People vs. Zakaria y Makasulay, et al., G.R. No. 181042, November 26, 2011, citing People v. Coreche, G.R. No. 182528, August 14, 2009.

[25] People v. Dumplin y Cahoy, G.R. No. 198051, December 10, 2012.

[26] G.R. No. 197371, June 13, 2012.

[27] People v. Garcia, G.R. No. 173480, February 25, 2009.

[28] People v. Roble, *supra*.

[29] Section 1. Entry of Judgment.- Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.

With respect to the criminal aspect, entry of judgment in criminal cases shall be made immediately when the accused is acquitted or his/her withdrawal of appeal is granted. However, if the motion withdrawing an appeal is signed by the appellant only, the Court shall first take steps to ensure that the motion is made voluntarily, intelligently and knowingly or may require his/her counsel to comment thereon.

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