

PEOPLE OF THE PHILIPPINES, PLAINTIFF- APPELLEE, VS. CARMEN MAGTOTO Y MEDINA AND RODRIGO PERALTA, ACCUSED, CARMEN MAGTOTO Y MEDINA, ACCUSED-APPELLANT.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Carmen Magtoto y Medina (appellant) is before the Court assailing the Joint Decision dated April 28, 2010 of the Regional Trial Court (RTC) Branch 16 of Manila, in Crim. Case Nos. 04-228879-80 which imposed on her the penalty of imprisonment of six (6) years and one (1) day to eight (8) years and fine of One Hundred Thousand Pesos (P100,000.00), and imprisonment of six (6) months and one (1) day to four (4) years and fine of Ten Thousand (P10,000.00), respectively, for possessing illegal drugs in violation of Republic Act (R.A.) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information filed against appellant on August 4, 2004 charged her and her co-accused Rodrigo Peralta y Ligo (Peralta) of violating Section 11 (3), Article 2, of R.A. No. 9165 as follows:

“That on or about August 1, 2004, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there wilfully, unlawfully and knowingly have in possession and under their custody and control two (2) heat-sealed transparent sachets with marking “CCM” and “RPL” containing, to wit:

Zero point zero one nine (0.019) gram and

Zero point zero three six (0.036) gram

of white crystalline substance known as “shabu” containing methylamphetamine hydrochloride, a dangerous drug.

Contrary to law.” (Records, p. 2).

Both accused pleaded “not guilty”. (Records, pp. 56-58).

At the trial, Police Officers PO2 Jesus De Leon, PO2 Teodorico Arabe,[1] and PO3 Antonio Cruz testified that they were ordered by their chief on August 1, 2004, to conduct surveillance in Sto. Rosario St., Tondo, Manila[2] regarding the rampant selling of shabu by a certain Carling Sumaway. The police were on their way to the street where Sumaway was allegedly selling drugs when they chanced upon appellant and Peralta. PO Cruz was about five meters from appellant when he saw her sell drugs to Peralta. PO Cruz immediately held appellant, while another officer held Peralta. PO Cruz recovered from the left hand of appellant, a plastic sachet containing shabu, two disposable lighters and four aluminum foils. (Records, pp. 138-139; TSN, PO3 Antonio Cruz, February 15, 2007, pp. 3-5)

Appellant for her part testified that around 2 p.m. on August 1, 2004, she was taking a bath when several police men entered their house and told her to get dressed. Appellant's brother asked the police if they have a warrant of arrest but they could not produce any. The police asked her to go with them saying they were just going to ask her

some questions. They stayed at Simon Street before they proceeded to the police station. With her was Peralta, a neighbor who was just buying bread when he was arrested. Peralta died sometime in 2009. At the station, she was told to change her wet clothes. A plastic sachet of shabu, which does not belong to her, was also presented to her. She also averred that the disposable lighter and aluminum foil were taken from her house but it probably belonged to her sister Henrietta, who used to be a drug-user. Appellant admitted having taken drugs when she was eighteen years old but claimed to have stopped because of asthma. She became a widow with three school children in 1998. She lives with her mother and helps in selling vegetables to earn money for her children. (TSN, March 18, 2010, pp. 3-11).

On cross-examination, she stated that she knows PO Arabe because he maltreated her brother-in-law, which incident is now subject of an investigation. She also admitted that her family is known by police officers because her sister, Henrietta, used to sell shabu. (TSN, March 18, 2010, pp. 11-13).

On April 28, 2010, the RTC rendered the herein assailed Decision finding appellant and Peralta guilty as charged:

“WHEREFORE, prosecution having proven the guilt of the accused beyond reasonable doubt, CARMEN MAGTOTO and RODRIGO PERALTA, are hereby CONVICTED in Criminal Case Nos. 04-228879-80.

In Criminal Case No. 04-228879, (Section 11, RA 9165) accused CARMEN MAGTOTO and RODRIGO PERALTA are hereby sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day to eight (8) years and to pay a fine of One Hundred Thousand Pesos (P100,000.00).

In Criminal Case No. 04-228880, (Section 12, RA 9165) accused CARMEN MAGTOTO is hereby sentenced to suffer the penalty of imprisonment of six (6) months and one (1) day to four (4) years and to pay a fine of Ten Thousand Pesos (P10,000.00).

The Branch Clerk, Atty. Rechie N. Ramos-Malabanan is ordered to turn over two (2) heat sealed transparent sachets with marking “CCM” and “RPL” containing Zero point zero one nine (0.019) gram and Zero point zero three six (0.036) gram of “shabu,” four (4) strips of aluminum foil and two (2) disposable lighter to the Philippine Drug Enforcement Agency for proper disposition.

Warrants of Arrest against accused Peralta issued on February 1, 2007 are still valid.

The bonds posted by both accused are cancelled.

SO ORDERED.” (Rollo, pp. 27-28).

The RTC held that the prosecution was able to prove beyond reasonable doubt the elements of illegal possession of dangerous drugs. (Rollo, p. 25).

The appellant is now before the Court, through the Public Attorney's Office, claiming that the court a quo gravely erred:

I

...IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

...IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INADMISSIBILITY OF THE PLASTIC SACHETS.

III

...IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED SEIZED DANGEROUS DRUGS.

IV

...IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INHERENT WEAKNESS OF THE PROSECUTION EVIDENCE.(Rollo, pp. 87-88).

The appellant argues that there being no Pre-Operation/Coordination Report and no informant who should have accompanied the team, it would appear that the alleged surveillance was a mere alibi of the police to justify their presence at the scene. (Rollo, p. 93).

She also asserts that there were serious gaps in the chain of custody. The arresting officers did not mark the seized items at the place of arrest or at the police station; the investigator had no personal knowledge of the seized items' source; there were no photographs and inventory of the seized items and no explanation for such absence, and; the forensic chemist as well the person from whom she received the items for laboratory examination were not presented in court. (Rollo, pp. 93-94).

Finally the appellant argues that while denial and alibi are weak, such defenses assume importance when the prosecution is unable to establish her guilt beyond reasonable doubt. (Rollo, p. 94).

The Office of the Solicitor General, for the People, meanwhile argues that appellant's arrest and the seizure of shabu were justified under the "plain view doctrine." The failure to photograph and conduct an inventory of the seized items in the manner prescribed by R.A. No. 9165 is not a ground to exonerate appellant from the charges against her as the identity and integrity of the evidence were preserved. The failure of the forensic chemist to testify also does not make the Chemistry Report hearsay. (Rollo, pp. 127-131).

The Court finds MERIT in the appeal.

It is a basic tenet in criminal law that an accused is presumed innocent unless the contrary is proven beyond reasonable doubt. The burden is on the prosecution to overcome the presumption, relying on the merits of its case and not on the weakness of the defense. If the prosecution fails to meet the amount of evidence required, the presumption of innocence of the accused prevails and he should necessarily be acquitted. (People v. Clara, G.R. No. 195528, July 24, 2013).

As a rule, findings of fact of trial courts are accorded weight and are not disturbed on appeal. There are exceptions however, such as when facts of weight and substance have been overlooked, misapprehended or misapplied. (People v. Pepino-Consulta, G.R. No. 191071, August 28, 2013).

Such is the case at bar.

In the prosecution for illegal possession of dangerous drugs, the following elements must be proven: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. (People v. Guru, 684 SCRA 544, 552-553 [2012])

For the prosecution of illegal possession of a dangerous drug, as with illegal sale, the corpus delicti of the offenses is the dangerous drug itself, in this case shabu. In sustaining a conviction under R.A. No. 9165, the identity and integrity of the corpus delicti must be shown to have been preserved. Such requirement necessarily comes from the illegal drug's unique characteristic which renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution. Thus, to remove any doubt 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-appellant. Otherwise, the prosecution for possession under R.A. No. 9165 shall fail. (People v. Pepino-Consulta, G.R. No. 191071, August 28, 2013; People v. Lapasaran, 687 SCRA 663, 670-671 [2012]).

Section 21, paragraph 1, Article II of R. A. No. 9165 provides:

“SEC. 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[.]

Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 meanwhile further requires:

“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 so confiscated, seized and/or surrendered, for disposition in the following manner:

(a) The apprehending officer/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 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 copy thereof. Provided, that the physical inventory and the photograph shall be conducted at the place where the search warrant is served; or at least the nearest police station 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 evidentiary value of the seized items are properly preserved by the apprehending team/officer, shall not render void and invalid such seizures of and custody over said items.”

These provisions underscore the importance of preserving the chain of custody of the illegal drugs.

"Chain of custody" has been defined as the duly recorded authorized movements and custody of seized drugs, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and finally for destruction. The 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 were made in the course of safekeeping and use in court as evidence, and the final disposition. (People v. Clara, G.R. No. 195528, July 24, 2013).

This rule is a method of authenticating evidence, by which the corpus delicti presented in court is shown to be one and the same as that which was retrieved from the accused or from the crime scene.(People v. Abdul, G.R. No. 186137, June 26, 2013)

It includes testimony about every link in the chain, from the moment the item was picked up to the time it was offered in 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 delivered to the next link in the chain. (People v. Clara, G.R. No. 195528, July 24, 2013). The 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. (People v. Abdul, G.R. No. 186137, June 26, 2013).

Specifically, the prosecution must establish the following links, namely: (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 by the forensic chemist to the court. (People v. Clara, G.R. No. 195528, July 24, 2013).

Appellant avers, and this Court agrees, that the prosecution failed to show that the arresting officers complied with the stringent requirements on the chain of custody.

PO Cruz in his testimony related:

“Q: Did you see for yourself what was recovered by your two companion[s] from the accused?

A: Yes sir.

Q: What was recovered?

A: One plastic sachet sir.

Q: What was done by your station on (sic) the items recovered from the accused?

A: We turned it over to our chief and it was marked by our investigator in our presence sir.

Q: What is the [m]arking?

A: The items recovered from Magtoto, it was marked as CCM- 1, on the two disposable lighter CCM-2 and on four aluminum foil, it was marked CCM-3. On accused Rodrigo Peralta, the plastic sachet was marked RPN sir.

Q: Did I hear from you, you recovered tooter?

A: No sir.

Q: Lighter?

A: Disposable lighter sir.

Q: Plastic sachet?

A: Yes sir.

Q: I am showing to you the contents of this brown envelope and recognize it?

A: Yes sir.

Q: What were the items you recovered from accused Magtoto?

A: Two heat sealed containing shabu with marking, disposable lighter, aluminum foil sir.

Q: The other plastic sachet, from whom was that recovered?

A: From Rodrigo Peralta sir.

Q: By whom?

A: Arabe, sir.

Q: After the marking of these exhibits, what is done by your station?

A: It was brought to MPD Crime Laboratory for laboratory examination sir.

Q: What was the result?

A: It was positive for methamphetamine hydrochloride sir. “ (TSN, February 15, 2007, pp. 5-6).

Based on these statements, it appears that after the police recovered the contraband from the two accused, they handed over the same to their chief, who in turn handed it to the investigator who purportedly marked the items. After marking, the items were then brought to the MPD Crime Laboratory for examination. The request for

laboratory examination was made by Police Chief Inspector Jessie Relloso Nitullano (Exh. "C", Rollo, p. 10). It is not clear however if Nitullano was the chief referred to by PO Cruz or the investigator who marked the seized items. It was also not clear if PO Cruz, who testified in court, was present when the items were delivered to the laboratory for examination. There was also no explanation why no inventory of the items were made and if the markings were made in the presence of the accused, his representative or the authorized persons mentioned in Section 21 of R.A. No. 9165.

It has been stressed that every link in the chain of custody must not show any possibility of tampering, alteration or substitution. While a perfect chain is not the standard, nonetheless, two crucial links must be complied with. First, the seized items must be marked in the presence of the accused and immediately upon confiscation. The marking must be supported by details on how, when, and where the marking was done, as well as the witnesses to the marking. Second, the turnover of the seized drugs at every stage, must be shown and substantiated; from confiscation from the accused, transportation to the police station, conveyance to the chemistry lab, and presentation to the court. (People v. Abdul, G.R. No. 186137, June 26, 2013).

The handling of the seized items in this case, leaves much to be desired and clearly falls below the standard set by law.

While it is true that under Section 21 (a) of the IRR, non-compliance with the aforesaid procedure shall not render void and invalid the seizure and custody of the illegal drugs, such saving clause is applicable only if the prosecution was able to prove the twin conditions of (a) existence of justifiable grounds and (b) preservation of the integrity and the evidentiary value of the items. (People v. Clara, G.R. No. 195528, July 24, 2013). The lapses in procedure must be recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved. (People v. Pepino-Consulta, G.R. No. 191071, August 28, 2013).

In this case, no justifiable ground was offered by the prosecution why the requirements set forth in Sec. 21 of R.A. No. 9165 and its IRR were not strictly complied with. The integrity and evidentiary value of the seized items were also not shown to have been preserved.

While the Court is mindful of the presumption of regularity in the performance of duty of public officers, this presumption however must always be weighed vis-a-vis the constitutional presumption of innocence of an accused. (People v. Clara, G.R. No. 195528, July 24, 2013). The presumption of regularity in the performance of duties cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself constitute proof of guilt beyond reasonable doubt. (People v. Pepino-Consulta, G.R. No. 191071, August 28, 2013). Where there are inconsistencies committed by police officers which amount to procedural lapses in observing the chain of custody of evidence requirement, such lapses negate the presumption of regularity. In case there is conflict between the presumption of regularity of police officers and the presumption of innocence of the accused, the latter must necessarily prevail. (People v. Clara, G.R. No. 195528, July 24, 2013).

WHEREFORE, the appeal is GRANTED. The Joint Decision dated April 28, 2010 of the Regional Trial Court of Manila, Branch 16, in Crim. Case Nos. 04-228879-80 is hereby REVERSED and SET ASIDE. Accused-appellant Carmen Magtoto y Medina is ACQUITTED for the failure of the prosecution to prove her guilt beyond reasonable doubt.

SO ORDERED.

Lopez, M.V., and Inting, S.B., JJ., concur.

[1] With the failure of Stenographer Karla Marie Eufemio to submit her transcript of stenographic notes dated January 25, 2007 and February 1, 2007, as she has been dropped from the rolls of employees due to absence without leave per Resolution of the Supreme Court (A.M. No. 08-8-471 RTC), the notes of the Presiding Judge on the testimonies of PO2 De Leon and PO2 Arabe were used in writing the decision. (See Rollo, p. 5).

[2] See Joint Affidavit of Arrest, Records, p. 6.

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