

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE ALVARAN Y ANTURPRIA A.K.A. JOSE ALVARAN Y ANTUERPIA @ NEIL, ACCUSED-APPELLANT.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision[1] dated January 17, 2014 of the Regional Trial Court, Fourth Judicial Region, Branch 73, Antipolo City in Criminal Cases Nos. 03-26117 and 03-26118 entitled: “People of the Philippines, versus Jose Alvaran y Anturpria @ Jose Alvaran y Antuerpia @ Neil, Accused.”, the dispositive portion of which reads:

“WHEREFORE, premises considered, accused Jose Alvaran y Anturpria a.k.a. Jose Alvaran y Antuerpia a.k.a. “Neil” is hereby found guilty beyond any shadow of a doubt of the offense charged in the Informations and is sentenced to the penalty of Life Imprisonment in Criminal Case No. 03-26117 with a fine of Php500,000.00 and in Criminal Case No. 03-26118, the same accused is hereby sentenced to suffer an Imprisonment of Twelve (12) years and One (1) day to Twenty (20) years with a fine of Php300,000.00 as provided for under Sec. 11, Par. (3) of RA 9165, as amended.

Jose Alvaran y Anturpria a.k.a. Jose Alvaran y Antuerpia a.k.a. “Neil” is to be immediately committed to the National Bilibid Prisons for immediate service of his sentence.

The seized specimens subject of the instant cases are ordered destroyed in the manner provided for by law.

SO ORDERED.”

The facts are:

Accused-appellant Jose Alvaran y Anturpria[2] (Alvaran for brevity) was charged by the City Prosecutor's Office of Antipolo City with Violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in two separate Informations[3] both dated July 16, 2003, docketed as Criminal Cases Nos. 03-26117 and 03-26118, respectively, the accusatory portions of which read as follows:

a) Criminal Case No. 03-26117

“That on or about the 15[th] day of July 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, to sell and dispose of any dangerous drug, did then and there willfully, unlawfully and knowingly deliver and give away to PO1 Robert Gangan two (2) heat-sealed transparent plastic sachets each containing 0.02 gram or in the total weight of 0.04 gram of white crystalline substance, for and in consideration of the sum of P200.00, which after corresponding laboratory examination conducted by the PNP Crime Laboratory gave a positive result to the test for Methylamphetamine Hydrochloride, also known as “shabu” a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.”

b) Criminal Case No. 03-26118

“That on or about the 15[th] day of July 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess/use any dangerous drug, did, then and there willfully, unlawfully and feloniously have in his possession, custody and control nineteen (19) heat sealed transparent plastic sachets containing 0.03 gram, 0.02 gram, 0.04 gram, and (sic) 0.03 gram, 0.01 gram, 0.02 gram, 0.03 gram, 0.03 gram, 0.03 gram, 0.02 gram, 0.03 gram, 0.04 gram, 0.03 gram, 0.02 gram, 0.02 gram, 0.02 gram, 0.01 gram, 0.03 gram and 0.01 gram respectively or in the total weight of 0.47 gram of white crystalline substance, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory on the white crystalline substance gave positive result to tests for Methylamphetamine Hydrochloride, also known as “shabu”, a dangerous drug in violation of the above-cited law.

CONTRARY TO LAW.”

When arraigned on August 12, 2003,[4] accused-appellant Alvaran pleaded not guilty to the offenses charged in the Informations. By agreement of the parties, the pre-trial conference was terminated on March 9, 2004. Thereafter, joint trial on the merits ensued.

The prosecution presented PO1 Robert Gangan (PO1 Gangan for brevity), P/Insp. Sandra Decena Go and SPO1 Danilo Sumpay (SPO1 Sumpay for brevity) as witnesses. However, in an Order[5] dated July 12, 2012, the testimony of SPO1 Sumpay was ordered stricken off the record for his repeated failure to show up in court despite due notice.

PO1 Gangan, a police officer assigned at the Antipolo City Philippine National Police (PNP) Station, testified that: on July 15, 2003, his team leader, SPO1 Sumpay, received a telephone call informing him that a certain Jose Alvaran was selling shabu; thus, SPO1 Sumpay conducted a briefing where he (PO1 Gangan) was designated as the poseur-buyer in a planned buy-bust operation; aside from him, the other members of the team were Police Officer Gacute and Police Aide Magsino; he prepared the buy bust money and pre-operation report which he sent to the Philippine Drug Enforcement Agency (PDEA) and recorded the operation in the police blotter; after the briefing, they proceeded to Sitio Radar, Barangay San Luis, Antipolo City, the area of operation; upon arrival at the target area, he walked toward the house of accused-appellant Alvaran and knocked at his door; accused-appellant Alvaran opened the door, trained his flashlight on him and asked him who he was; after introducing himself as a former companion of Jeser, he said: “Pa iskor naman” and handed to him two (2) pieces of 100-peso bills; in return, accused-appellant Alvaran handed to him two (2) plastic sachets of shabu; forthwith, he arrested accused-appellant Alvaran who struggled to free himself, but the other members of the team arrived and restrained him; accused-appellant Alvaran was then apprised of his constitutional rights; when Police Officer Gacute frisked accused-appellant Alvaran, he recovered from him nineteen (19) plastic sachets containing white crystalline substance, as well as the marked money used in buying shabu; he was brought to the PNP police station of Antipolo City where the members of the buy-bust team executed their affidavit; he marked the specimens recovered from accused-appellant Alvaran and immediately forwarded the same to the PNP Crime Laboratory for examination; after learning about the result of the examination of the specimens, they took accused-appellant Alvaran to the City Prosecutor's Office for inquest proceedings.[6]

The testimony of P/Insp. Sandra Decena Go, a Forensic Chemical Officer from the PNP Crime Laboratory, Camp Crame, Quezon City was stipulated upon by the parties. The defense admitted that: P/Insp. Sandra Decena Go is an expert witness; she conducted a laboratory examination on the specimens submitted by the police officers involved in the buy-bust operation; after examination, the specimens, consisting of white crystalline substance

contained in plastic sachets marked as Exhibits “JA”, “JB”, “J-1” to “J-19” all tested positive to the test for methylamphetamine hydrochloride, a dangerous drug; she reduced her findings in writing and prepared two (2) reports, viz., Initial Laboratory Report[7] and Chemistry Report No. D-830-03,[8] the contents of which are basically the same.

For its part, the defense presented accused-appellant Alvaran as its sole witness. He testified that: on July 15, 2003 at around 1:00 o'clock in the early morning, he was sleeping, together with his wife and minor children, in his house at Sitio Radar, Barangay San Luis, Antipolo City; he was aroused by the crying of his wife and children and saw four (4) men armed with guns inside his house; they pointed their guns at him and told him not to move; his wife and children did not do anything as they continued to cry; two (2) of the men entered their room while the other two (2) remained with him; the two armed men searched their room for about two (2) to five (5) minutes; when they came out, they showed him a matchbox containing about ten (10) small plastic sachets and told him that those belonged to him; he vehemently denied ownership of the items, telling them: “Hindi po sa akin yan.”; he was brought out of the house and loaded to their vehicle; he was taken to the PNP Police Station of Antipolo City and detained in a detention cell; he was later brought to the City Prosecutor's Office for inquest proceedings and only then did he learn that he was being charged with selling and possessing illegal drugs; and, he does not know anything about the two (2) 100-peso bills allegedly recovered from him.[9]

After trial, the lower court rendered the assailed decision finding accused-appellant Alvaran guilty of the offenses charged. Hence, this appeal, assigning this lone error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.

The appeal is meritorious.

Accused-appellant Alvaran argues that: there is no prima facie case against him as shown by the fact that a) no member of the Philippine Drug Enforcement Agency (PDEA) participated in the buy-bust operation and the PDEA did not supervise said operation, b) no PDEA officer was presented in order to testify that said agency was aware of what was going on during the operation, c) the Chemistry Report does not contain a result of the quantitative examination and, d) the person who signed the request for laboratory examination was not presented in court; the alleged sale of shabu was not proven beyond reasonable doubt; the testimony of the alleged poseur-buyer, PO1 Gangan, is marked by inconsistency, i.e., he testified on direct examination that after knocking at the door of accused-appellant Alvaran, he introduced himself as a companion of “Jeser,” whereas, on cross-examination, he declared that he told accused-appellant Alvaran: “Ako si Jeser, bibili lang ako ng panggamit.”; it could be that, after accused-appellant Alvaran focused his flashlight on the face of PO1 Gangan and found out that he was not talking to Jeser, a commotion ensued because he was alarmed by the presence of an impostor and it was then that he was arrested by the poseur-buyer; the version of accused-appellant Alvaran that he was awakened by the crying of his wife and children after the intrusion of the police officers is more credible; PO1 Gangan testified that he was the one who submitted the specimens to the PNP Crime Laboratory in Camp Crame for laboratory examination, however, the stamp mark on said document shows that the specimens were delivered by a certain PO1 L. V. Sotto; there is no evidence showing that the specimens were turned over to the police investigator and evidence custodian and how the same reached the forensic chemist; and, in this case, there was a violation of the chain of custody rule under Section 21 of Republic Act No. 9165 and Section 21(a) of the Implementing Rules and Regulations of said law.

The Office of the Solicitor General counters that: the prosecution in these cases was able to prove the existence of the essential elements of the offenses of illegal sale of shabu and illegal possession thereof; in the case of illegal

sale of shabu, accused-appellant Alvaran was positively identified by PO1 Gangan, the poseur-buyer, as the person who sold the sachets of shabu which were presented in court; PO1 Gangan also testified that he received the shabu from accused-appellant Alvaran after he handed the P200.00 to him; with regard to the case for illegal sale of shabu, 19 sachets of shabu were recovered from the possession of accused-appellant Alvaran after he was searched by a member of the apprehending team, following his arrest during a buy-bust operation; accused-appellant Alvaran did not adduce evidence showing his legal authority to possess shabu that he freely and consciously possessed; with regard to the alleged lack of coordination with the PDEA, the Supreme Court in *People v. Montevirgen*,^[10] held that coordination with the PDEA is not an indispensable element of a proper buy-bust operation and a buy-bust operation is not invalidated by mere non-coordination with the PDEA; with respect to the contention of accused-appellant Alvaran that the theory of the defense is more credible, the lower court found otherwise as it gave credence to the prosecution's case that he sold shabu to the poseur-buyer, as established by the testimonies of PO1 Gangan and his back-up; in criminal cases, the factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record; in cases involving violations of R.A. No. 9165, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary; in this case, there is no evidence that the members of the buy-bust team were actuated by improper motive or were not performing their duties in accordance with law, thus they are entitled to the presumption of regularity in the performance of their official duties; in contrast, the defenses of denial and frame-up raised by the defense have been invariably viewed with disfavor for they can easily be concocted, but are difficult to prove; contrary to the contention of accused-appellant Alvaran that there were gaps in the chain of custody of the seized illegal drugs which cast doubt as to the identity and integrity of the seized items, the chain of custody of the seized prohibited drug in this case was adequately established; the failure of the members of the buy-bust team to strictly comply with the prescribed procedures in the inventory of seized drugs does not render the accused-appellant Alvaran's arrest illegal or the items seized or confiscated from him inadmissible; in *People v. Montevirgen*,^[11] the Supreme Court held that failure of the apprehending police officers to comply with Section 21 (a) Article II of the Implementing Rules and Regulations of R.A. No. 9165 regarding the physical inventory and photograph of the seized items is not fatal to the prosecution's case.

At the outset, it bears stressing that the testimony of SPO1 Sumpay was stricken off the record in an Order^[12] dated July 12, 2012, thus:

“When this cas (sic) called, accused and his counsel were present. However, SPO1 Sumpay who is supposed to be cross examined was again absent. Atty. Carlo Magno Reonal moved that the direct testimony of said witness be stricken off the record for his repeated failure to appear and finish his testimony. Finding said motion to be with merit, the same is hereby granted. X x x.

X x x x x x x x.”

There is no showing on record that the Order dated July 12, 2012 was reconsidered or set aside by the lower court, thus the same stands. Since the testimony on direct examination of SPO1 Sumpay was ordered stricken off the record, it is as if he did not testify at all in this case. Yet, the lower court in deciding the case, still considered said testimony and even declared that it corroborated the testimony of the poseur-buyer PO1 Gangan. It is quite perplexing how the presiding judge of the lower court who ordered the striking off the record of SPO1 Sumpay's testimony on direct examination and later decided the case, failed to take note of his own order. The testimony SPO1 Sumpay should not have been considered by the lower court as part of the testimonial evidence for the prosecution since the defense was deprived of its constitutional right to cross-examine said witness. As things stand, the only witness to the alleged buy-bust operation is PO1 Gangan whose testimony is uncorroborated due to the striking off the record of SPO1 Sumpay's testimony on direct examination. Thus, this Court, pursuant to the

Order of the lower court casting off the testimony of SPO1 Sumpay, would not consider the same as evidence for the prosecution.

With regard to accused-appellant Alvaran's contention that the members of the apprehending team do not appear to have been detailed to or were rendering detailed service for the PDEA, suffice it to say that the law itself is clear that "The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however, they shall continue with the performance of their task as detail service with the PDEA, x x x." It is noted that when the alleged buy-bust operation was conducted on July 15, 2003, R.A. No. 9165 was in operation for barely a year while its Implementing Rules and Regulations for less than a year. It could be safely assumed that during that time, there were no graduates yet of the PDEA Academy who would take over the functions of PNP personnel assigned to the Narcotics Group.

On the matter of the apprehending officers' coordination with the PDEA, the Supreme Court has ruled that "[C]oordination with PDEA, while perhaps ideal, is not an indispensable element of a proper buy-bust operation;"[13] it is not invalidated by mere non-coordination with the PDEA.[14] Likewise, the non-appearance in court of an officer from the PDEA who would testify on the agency's record of the case is not necessary as his testimony would only be corroborative in nature.

The fact that the Initial Laboratory Report[15] and Chemistry Report No. D-830-03[16] prepared by P/Insp. Sandra Decena Go do not contain a statement on the result of the quantitative examination is immaterial, it appearing that the defense admitted the presentation of said witness as an expert and that she examined the specimens subject of these cases in a manner she deemed appropriate.

As for the non-presentation of the police officer who prepared that Request for Laboratory Examination, the same would not adversely affect the case of the prosecution since his testimony would only be corroborative in nature.

The foregoing notwithstanding, the evidence for the prosecution as a whole leaves much to be desired as it failed to establish beyond reasonable doubt the chain of custody of the illegal drugs subject of these cases.

The chain of custody is basically the duly recorded authorized stages of transfer of custody of seized dangerous drugs, from their seizure or confiscation to receipt in the forensic laboratory for examination to safekeeping to presentation in court for destruction.[17] The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.[18] Thus, the chain of custody requirement has a two-fold purpose: (1) the preservation of the integrity and evidentiary value of the seized items, and (2) the removal of unnecessary doubts as to the identity of the evidence. The law recognizes that, while the presentation of a perfect unbroken chain is ideal, the realities and variables of actual police operation usually makes an unbroken chain impossible.[19] With this implied judicial recognition of the difficulty of complete compliance with the chain of custody requirement,[20] substantial compliance is sufficient as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers.[21]

In this case, PO1 Gangan testified that after he bought two (2) sachets of shabu from accused-appellant Alvaran, the latter was taken into custody and brought to the police station where they executed their affidavit. At the police station, he made markings on the two (2) sachets of shabu sold to him by accused-appellant Alvaran, as well as, on the nineteen (19) other sachets confiscated by Police Officer Gacute. Thereafter, he immediately submitted the specimens to the PNP Crime Laboratory for examination. There is no showing, however, who was or were in possession of the specimens while the members of the apprehending team were in transit from the area of operation to the police station. After the execution of their affidavit, PO1 Gangan also testified that he submitted the Request for Laboratory Examination, together with the specimens to the PNP Crime Laboratory.

However, the stamp mark on the Request for Laboratory Examination marked as Exhibit “D”[22] reveals that the Request for Laboratory Examination and the specimens were delivered by a certain PO1 L.V. Sotto. There is nothing on record showing that PO1 Gangan had any participation in the submission of the specimens and request for laboratory examination to the PNP Crime Laboratory. There is also no evidence showing that said specimens were turned over by PO1 Gangan to L.V. Sotto for submission to the PNP Crime Laboratory.

With regard to the markings on the specimens made by PO1 Gangan, he did not specify what those markings were when he took the witness stand.

While it is true that the defense admitted that P/Insp. Sandra Decena Go received a request for laboratory examination, examined the specimens subject of these cases, and reduced her finding in writing, she testified that she had no personal knowledge, insofar as the source thereof is concerned. She might have examined several sachets of shabu marked “JA” and “JB, as well as, “J1” to “J19”, but she had no personal information which of those sachets were the subject of violations of Section 5 and 11, Article II of R.A. No. 9165, without relying on the request for laboratory examination. Thus, there is no substantial compliance with the requirement of the law regarding the conclusive identification of the illegal drugs subject of these cases.

More importantly, after the specimens were brought to court by P/Insp. Sandra Decena Go, PO1 Gangan did not identify them as the same illegal drugs bought and confiscated from accused-appellant Alvaran.

Clearly, the members of the apprehending team committed several lapses in the handling and custody of the seized items which, when taken collectively, would constitute serious breach in the chain of custody requirement. It is compounded by the fact that when prosecution witness PO1 Gangan testified, he failed to specify the markings he made on the specimens and to positively identify the illegal drugs submitted by the Forensic Chemist to the court.

Anent the contention of the Solicitor General that the police officers involved in the buy-bust operation enjoy the presumption of regularity in the performance of their official functions, the Supreme Court in *Malillin v. People*[23] explained:

“The presumption of regularity is merely just that - a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.”

In this case, the police officers involved in the buy-bust operation against accused-appellant Alvaran failed to substantially comply with the chain of custody requirement under Section 21, R.A. No. 9165 and its Implementing Rules and Regulations. [W]hen challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.[24]

Lastly, while accused-appellant Alvaran's defenses of denial and frame-up are invariably viewed with disfavor since they can be easily fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs, [j]urisprudence has established that the defense of denial assumes significance when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt,[25] as in this case. After all, a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense.[26]

WHEREFORE, the appeal is GRANTED. The assailed decision dated January 17, 2014 of the Regional Trial

Court of Antipolo City, Branch 73 in Criminal Cases Nos. 03-26117 and 03-26118 is hereby REVERSED and SET ASIDE and a new one entered ACQUITTING accused-appellant Alvaran of the offenses charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accordingly, accused-appellant Alvaran who is presently serving sentence at the National Bilibid Prisons in Muntinlupa City is hereby ordered released from confinement, unless held for some other legal cause or causes.

SO ORDERED.

Gonzales-Sison, M., and Cruz, R. A., JJ., concur.

[1] Record, pp. 221-228

[2] Also known as Jose Alvaran y Anturpria and “Neil.”

[3] Record, pp. 1-4; and, pp. 20-23

[4] Records, Folder I, p. 39

[5] Records, Folder I, p. 200

[6] TSN, April 7, 2005

[7] Exhibit “E”

[8] Exhibit “F”

[9] TSN, October 17, 2013

[10] G.R. No. 189840, December 11, 2013, citing *People v. Sembrano*, G.R. No. 185848, August 11, 2010

[11] *Supra*.

[12] *Supra*.

[13] *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 696.

[14] *Id.*, quoting *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 368-370.

[15] Exhibit “E,” Record, p. 236

[16] Exhibit “F” Record, p. 237

[17] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 (which implements Republic Act No. 9165) specifically defines chain of custody as follows:

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 were made in the course of safekeeping and used in court as evidence, and the final disposition.

[18] *People v. Langcua*, G.R. No. 190343, February 6, 2013, 690 SCRA 123, 139.

[19] See *People v. Aguilar*, G.R. No. 191396, April 17, 2013, 696 SCRA 838. There, the Court said: “While a

testimony about a perfect and unbroken chain is ideal, such is not always the standard as it is almost always impossible to obtain an unbroken chain.”

[20] See *People v. Rusiana*, G.R. No. 186139, October 5, 2009, 603 SCRA 57, 65. There, this Court stated: “[A]lthough ideally the prosecution should offer a perfect chain of custody in the handling of evidence, ‘substantial compliance with the legal requirements on the handling of the seized item’ is sufficient. Behind this is an acknowledgment that the chain of custody rule is difficult to comply with.”

[21] See *People v. Langcua*, supra note 32 at 139, where the Court says: “As long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers, substantial compliance with the procedure to establish a chain of custody is sanctioned.”

[22] Record, p. 235

[23] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[24] *People v. Peralta*, G.R. No. 173477, February 26, 2010.

[25] See *People v. Mejia*, G.R. No. 185723, August 4, 2009, 595 SCRA 356, 374.

[26] *Dizon v. People*, G.R. No. 144026, June 15, 2006, 490 SCRA 593, 613; citing *People v. Fronda*, G.R. No. 130602, March 15, 2000, 328 SCRA 185, 194.

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