

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL MANAOAT Y VIRAY, ACCUSED-APPELLANT.

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

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

On appeal is the December 11, 2012 Judgment (Records, pp. 70-84) of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 convicting herein accused-appellant Michael Manaoat y Viray of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the “Comprehensive Drugs Act of 2002”.

The facts:

In an Information dated January 24, 2012, accused-appellant Michael Manaoat y Viray was charged with the crime of violating Sections 5, Article II of Republic Act No. 9165 otherwise known as “The Comprehensive Dangerous Drugs Act of 2002”. The accusatory portions of which reads:

“That on or about 5:00 o'clock in the afternoon of January 23, 2012, at Brgy. Gayaman, Binmaley, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously sell two (2) transparent heat-sealed plastic sachets containing methamphetamine hydrochloride known as “Shabu”, an illegal drug, weighing 0.008 and 0.063 grams, to poseur-buyer PO1 Jhonny C. Tomagos without lawfully authority to do so.” (Records, p.1)

On February 28, 2012, accused-appellant pleaded NOT GUILTY to the charge against him. (Records, p.18)

Trial on the merits ensued where the prosecution presented PO2 Jhonny C. Tomagos (PO2 Tomagos) and Police Inspector Myrna Malojo-Todeño (P/Insp. Todeño) as witnesses while accused-appellant served as witness for the defense. SPO1 Dennis Quinantoto (SPO1 Quinantoto) and Rommel Sembrano testified for the prosecution however, their testimonies were dispensed with.

The Prosecution revealed that on January 23, 2012, a briefing for a buy-bust operation against accused-appellant was headed by Police Inspector Rommel Sembrano (P/Insp. Sembrano) and Chief of Police Frankie Candelario. PO2 Tomagos acted as poseur buyer so the marked money worth five hundred (Php 500.00) pesos was handed to him. The team coordinated with the Philippine Drug Enforcement Agency (PDEA) and the Barangay Officials of Brgy. Gayaman.

Thereafter, PO2 Tomagos, SPO1 Jimmy Vaquilar and P/Insp. Sembrano headed to the public market of Binmaley to meet with their asset. Meanwhile, the rest of the team stayed at Olegario Furniture which is ten (10) meters away from them. Shortly before accused-appellant arrived, their asset left so as not to be identified with them.

As soon as accused-appellant arrived, PO2 Tomagos asked for his identity and in doing so, they were able to proceed with their transaction. PO2 Tomagos handed the marked money to accused-appellant who in turn handed a plastic sachet of the alleged shabu. Thus, PO2 Tomagos held the hand of accused-appellant, as it was the pre-arranged signal.

Accused-appellant was then apprehended by the team and brought to the Gayaman Barangay Hall. After the

seized items were marked and inventoried in the presence of the Barangay Officials, accused-appellant was brought to Binmaley Police Station. The alleged shabu was turned over to SPO1 Quinantoto, who brought the letter request for Laboratory Examination of the alleged drug to P/Insp. Todeño, Forensic Chemist Officer of Pangasinan Provincial Crime Laboratory. The Final and Initial Laboratory Reports yielded positive results for Shabu.

On the other hand, accused-appellant denies the charge against him. He stated that on said date, he was at home with his family until 4:30 o'clock in the afternoon. Later, he called his friend Darwin to borrow money as his child was sick during that time. They met at the City Mall of Lucao so accused-appellant can get the money. On his way home, he took the tricycle of his barangaymate to save money.

Accused-appellant, on board the tricycle of his barangaymate, was ordered to pullover at the side of the road by the police officers behind them. When they alighted the tricycle, accused-appellant was frisked by the police officers and informed him that they were conducting a buy-bust operation to which he allegedly was unfamiliar with. Afterwards, they were ordered to board the police mobile. Accused-appellant avers that nothing was seized from him during the search.

Upon reaching the Barangay Hall, accused-appellant was ordered to enter the place while the tricycle driver was ordered to go home. Among the items shown to accused-appellant placed on top of a table such as two plastic sachets of shabu, P740.00 and aluminum foil, he revealed that only the P240.00 belonged to him. He claims that all the rest were implanted since nothing was taken from him during the search. The Barangay Kagawad who arrived told the police officers to send accused-appellant home since the items on the table does not belong to him.

The police officers who did not even inform accused-appellant of his constitutional rights then brought him to the PNP Binmaley Police Station. Accused-appellant took a drug test which yielded a negative result. During his one month and a half stay in jail of the said police station, accused-appellant declared that a police officer by the name of Willy Cristobal even violated him by covering his mouth and nose prior to slapping him the following day. He was also informed by Jimmy Bacquilao that there was a mistaken identity.

The RTC ruled against accused-appellant stating that he was caught in flagrante delicto and his defense of denial and frame up had no basis. It rendered its Decision on December 11, 2012 which reads:

“WHEREFORE, premises considered, the court finds the accused Michael Manaoat GUILTY beyond reasonable doubt of the crime of Violation of Section 5 or Art. II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (Php 500,000.00) Pesos.

SO ORDERED.”

Dissatisfied, accused-appellant filed an appeal before this Court with the following assigned errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE AND INCONSISTENT TESTIMONY OF THE PROSECUTION WITNESS.

II

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY.

III

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S

WARRANTLESS ARREST AS ILLEGAL.

IV

THE COURT A QUO GRAVELY ERRED IN NOT APPLYING THE 'FRUIT OF THE POISONOUS TREE' DOCTRINE WITH RESPECT TO THE ALLEGEDLY CONFISCATED SHABU.

V

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT ACCUSED-APPELLANT'S RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.

VI

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

VII

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU. (Rollo, pp.22-23)

The appeal is meritorious.

Accused-appellant contends that the RTC erred in convicting him based on the testimonies of the police officers which are inconsistent and improbable. He was also not given a counsel during his investigation neither was he informed of his rights during his arrest. In his Brief, accused-appellant also claimed that no photograph and inventory of the seized items were taken in the presence of a media and Department of Justice (DOJ) representative. Thus, the guilt of the accused was not proven beyond reasonable doubt.

On the contrary, the plaintiff-appellee insists on the presumption that official duty had been regularly performed and that the prosecution was able to establish all the elements of illegal sale of drugs.

Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal. (People v. Pedronan, 452 Phil. 226, 233 [2003]);

We begin with the precept that in criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. (People v. Obmiranis, 574 SCRA 140 [2008]) Of prime importance therefore in these cases is that the identity of the dangerous drug likewise be established beyond reasonable doubt. (People v. Obmiranis, 574 SCRA 140 [2008]) In other words, it must be established that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

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. (Mallillin v. People, 553 SCRA 619, 632 [2008]) It would include the testimony about every link in the chain, from the moment the item was picked up, 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. These 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. (Mallillin v. People, 553 SCRA 619, 633 [2008]) Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused. (People v. Obmiranis, 574 SCRA 140 [2008])

Section 1 (b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002 (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. 9165 in relation to Section 81 (b) Article IX of R.A. 9165) which implements R.A. No. 9165 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 use in court as evidence, and the final disposition.”

In this case, while PO2 Tomagos admitted that his team arrested the accused-appellant, records are bereft of proof on how the seized items were handled from the time of arrest until they brought the accused-appellant and the evidence to the office for investigation and disposition. PO2 Tomagos also did not present any justifiable grounds why he did not immediately conduct an inventory and mark the confiscated items after the arrest. PO2 Tomagos just claimed that after the arrest, he marked and inventoried the plastic sachets in the barangay hall and proceeded to their office together with the accused-appellant. Thereafter, he turned it over to SPO1 Dennis Quinantoto, the investigator on duty, for documentation. SPO1 Quinantoto brought a letter request for Laboratory Examination of the alleged drug to P/Insp. Todeño, Forensic Chemist Officer of Pangasinan Provincial Crime Laboratory. However, the evidence of the prosecution did not reveal the identity of the person who had the custody and safekeeping of the drugs after its examination and pending presentation in court. The failure of the prosecution to immediately conduct an inventory and mark the confiscated items and to establish the chain of custody is fatal to its cause.

Furthermore, the required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

“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.”

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which reads:

“(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 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.”

The records of the present case are bereft of evidence showing that the apprehending team followed the outlined procedure despite its mandatory terms, as indicated by the use of "shall" in its directives. No inventory and photograph were made in the presence of a representative from the media and Department of Justice (DOJ) who shall be required to sign the copies of the inventory and be given a copy thereof. Furthermore, the alleged inventory was not presented in court to prove that accused-appellant or the alleged elected public official present during the arrest signed the said inventory.

The buy-bust team did not bother to show that they intended to comply with the procedure but were hindered by some justifiable reason or consideration. Accordingly, despite the presumption of regularity in the performance of official duty, this Court stresses that the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality.

In the case at bar, it is indisputable that the procedures for the custody and disposition of confiscated dangerous drugs in Section 21 of R.A. No. 9165 were not complied with. There was no representative from the media and the Department of Justice who participated in the operation and who were supposed to sign an inventory of seized items and be given copies thereof. None of the statutory safeguards were observed.

As officers of the law, knowing that they would conduct a buy-bust operation, they are presumed to be aware of their duties and responsibilities in the apprehension of drug users and pushers, in securing the pieces of evidence related to their arrest, and in protecting the chain of custody.

Indeed, a unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same, there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. (*People v. Dela Cruz*, 568 SCRA 273 [2008]) Thus, the corpus delicti should be identified with unwavering exactitude. (*People vs. Robles*, 586 SCRA 647 [2009])

The prosecution's failure to show that the arresting officer followed the required procedure in the conduct of the buy-bust operation, as well as the proper procedure in the chain of custody and control of the seized specimens, constitutes a deviation that destroys the presumption of regularity in the performance of duty. Thus, the presumption of regularity in the performance of duty cannot overcome the constitutional presumption of innocence. In the case of *People vs. Sanchez* (569 SCRA 194 [2008]) citing *People vs. Cañete* (384 SCRA 411 [2002]), the High Court ruled:

“While the Court is mindful that the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption 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. The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because First, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, . . . [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. The presumption also cannot prevail over positive averments concerning violations of the constitutional rights of the accused. In short, the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.”

WHEREFORE, in view of the foregoing, the appeal is GRANTED. The December 11, 2012 Judgment of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 convicting herein accused-appellant Michael Manaoat y Viray of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the “Comprehensive Drugs Act of 2002” is hereby REVERSED and SET ASIDE. The accused-appellant Michael Manaoat y Viray is hereby ACQUITTED and ordered RELEASED from detention unless being held for some other lawful cause.

SO ORDERED.

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

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