

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD MANALANG, ACCUSED-APPELLANT.

CR.-H.C. NO. 03644, December 08, 2010

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Court of Appeals

On appeal is the Decision (Rollo, pp. 24-32) dated October 17, 2008 of the Regional Trial Court (RTC), Branch 123 of Caloocan City, convicting accused-appellant Arnold Manalang y de Leon (hereinafter Appellant) of Violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." The fallo of the assailed Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered, finding accused ARNOLD MANALANG guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II, RA 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P1,000,000.00.

The shabu subject matter of this case including the buy bust money is hereby forfeited in favor of the government to be disposed of in accordance with the rules governing the same.

Costs against the accused.

SO ORDERED." (Rollo, p. 32)

In an Information (Records, p. 2) dated March 21, 2005, Appellant was indicted for the crime of Violation of Section 5, Article II of RA 9165. The accusatory portion reads as follows:

"That on or about the 17[th] day of March, 2005 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 Anthony Azures, who posed as buyer methamphetamine hydrochloride (shabu) weighing 0.04 grams, a dangerous drug, without the corresponding license or prescription therefore, knowing the same to be such.

Contrary to law." (Ibid.)

When arraigned on March 30, 2005, Appellant pleaded not guilty to the crime charged. (Records, p. 15) After the pre-trial was terminated (Records, p. 19), trial on the merits thereafter ensued.

The prosecution presented PSI Albert Arturo (hereinafter PSI Arturo), PO1 Anthony Anzures (hereinafter PO1 Anzures), PO1 Borbon Paras (hereinafter PO1 Paras), and PO2 Randolph Hipolito (hereinafter PO2 Hipolito), as its witnesses. Their testimonies tend to establish the following facts:

At around past 8:00 p.m. of March 17, 2005, PO1 Paras received a phone call from a confidential informant relaying the information that one alias "Arnold/Anot" is illegally selling dangerous drugs in Laforteza Subdivision, Camarin, Caloocan City. He immediately relayed the information to their superintendent, P/Supt. Napoleon L. Cuaton (hereinafter P/Supt. Cuaton), who promptly formed a buy-bust team. The team which was headed by team leader SPO4 Ernesto B. Palting (hereinafter SPO4 Palting) had nine (9) members, including PO1 Anzures and PO1 Paras. PO1 Anzures was designated as poseur-buyer and was provided two (2) pieces of 100

peso bills as buy-bust money.

The team arrived at the target area at around past 10:00 p.m. Upon arrival thereat, the buy-bust team met with the informant and discussed the plan. Since poseur-buyer PO1 Anzures did not know the target person, it was agreed that the informant will throw a cigarette butt in front of a male person to identify the target of the buy-bust operation. Thereafter, the informant walked towards the location of Appellant and PO1 Anzures followed about six (6) meters behind. While walking, the informant threw a cigarette butt in front of a male person standing. Upon seeing the cigarette butt thrown, PO1 Anzures approached the identified target and told him, "Pare, paiskor naman." Appellant replied that he only had "Dalawang Piso" which meant he had 200 pesos worth of shabu. PO1 Anzures agreed to buy it and handed over the buy-bust money to Appellant in exchange for a plastic sachet containing white crystalline substance. At that instance, PO1 Anzures scratched his nape as the pre-arranged signal to his back-ups. Upon seeing the signal, PO1 Paras rushed toward them. Forthwith, PO1 Anzures arrested Appellant and recovered the marked money. PO1 Paras assisted in the arrest who informed the Appellant of his constitutional rights. The team, together with the Appellant, immediately left and proceeded to their office.

Upon arrival at the office, PO1 Anzures immediately turned over the seized pieces of evidence to PO2 Hipolito who served as the investigator of the case. With the pieces of evidence turned over to his custody, PO2 Hipolito issued an Evidence Acknowledgment Receipt dated March 18, 2005. PO2 Hipolito marked the plastic sachet with "AMD (Buy-Bust) 3/17/05" for identification. Subsequently, he prepared a request for the laboratory examination of the contents of the seized plastic sachet. PO2 Hipolito likewise prepared a request for Ultra Violet (UV) powder detection on the marked money and the persons of Appellant and PO1 Anzures.

PSI Arturo, a Forensic Chemist of the Northern Police District Crime Laboratory Office, received the two (2) letter-requests and conducted both the qualitative examination on the seized white crystalline substance and the UV powder detection. The laboratory examination yielded positive for methylamphetamine hydrochloride. The UV powder detection also yielded positive for the presence of UV fluorescent powder on PO1 Anzures as well as on the Appellant. The marked money likewise showed positive the presence of UV fluorescent powder. On the basis of the Physical Science Reports submitted by PSI Arturo, PO2 Hipolito prepared the Referral Slip and the corresponding Spot Report.

For the defense, the Appellant himself and his neighbor, Erlinda Galicano (hereinafter Linda), were presented as witnesses. Their testimonies offered the following version:

Between 4:00 p.m. to 5:00 p.m. of March 17, 2005, Appellant was inside his house resting on their sofa when six (6) male persons barged in. One of them poked a gun at him and ordered him to keep silent and to tell them where he hid the shabu. He claimed that there was no shabu in their house. Nevertheless, the men searched the house, one searched the ground floor and two persons were on the second floor. The rest were behind the Appellant, holding his shoulders. The search lasted for 10 to 15 minutes.

After the search, Appellant was led outside without him knowing what his offense was. He was made to board a passenger jeepney and while thereat, he requested that he be allowed to bring a shirt and slippers if they were to take him with them. The police officers ordered Linda, one of Appellant's neighbors, to get his shirt and slippers. She was also instructed to inform the Appellant's relatives of his arrest. Thereafter, the police officers and Appellant left, on board the passenger jeepney. They went to several places where the police officers arrested more persons before they finally reached the police station around 2:00 a.m. of March 18, 2005. Appellant was brought in at the police station with nine other arrested persons.

After trial on the merits, the RTC found that the prosecution sufficiently established Appellant's guilt beyond reasonable doubt. The dispositive portion of the appealed Decision was quoted in the early part of this Decision.

Appellant seasonably filed an appeal with this Court raising the following errors-

"I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE PROSECUTION SUCCEEDED IN DISCHARGING ITS BURDEN OF OVERCOMING THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE[;]

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE INSTANT CASE QUALIFIES AS AN EXCEPTION FROM THE GENERAL RULE OF COMPLIANCE WITH THE PROCEDURES IN REPUBLIC ACT NO. 9165[;] [AND]

III

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT'S CONSTITUTIONAL RIGHT WAS VIOLATED IN THE COURSE OF HIS ARREST." (Rollo, p. 47)

Appellant faults the RTC for finding him guilty beyond reasonable doubt of the offense charged, despite the prosecution's failure to comply with the procedural requirements in the handling and disposition of the seized specimen as required under RA 9165. In essence, Appellant contends that to fully ascertain the identity of the alleged dangerous drug, it is fundamental that the different links in the chain of custody be conclusively established with definite exactitude.

At the outset, it is well to emphasize that an appeal in a criminal case throws the whole case open for review. (People vs. Balagat, 586 SCRA 640, 644 [2009]) It is on the basis of this review that We find the instant appeal meritorious.

In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the corpus delicti or the illicit drug as evidence. (People vs. Robles, 586 SCRA 647, 654 [2009]) Thus, the prosecution's obligation to prove the corpus delicti, the body of the crime, to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt. (People vs. Coreche, 596 SCRA 350, 356 [2009]) Proof of the corpus delicti in a buy-bust operation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court, a condition sine qua non for conviction. (Malillin vs. People, 553 SCRA 619, 633 [2008])

A judicious evaluation of the evidentiary records show that while the prosecution established through the testimony of PO1 Anzures that the sale of the dangerous drug by Appellant was consummated, the buy-bust team committed lapses in the procedural requirements in handling the seized specimen as mandated under RA 9165. The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of RA 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."

Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 implements the aforequoted paragraph, to wit:

"(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: xxx 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."

In *People vs. Kamad* (610 SCRA 295, 304-305 [2010]), the Supreme Court pronounced that strict compliance with the prescribed procedure in Section 21 of RA 9165 is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution, either by accident or otherwise.

In the instant case, the arresting officers failed to take a photograph and make an inventory of the recovered plastic sachet containing white crystalline substance which is fatal to the prosecution's case. Worse, the buy-bust team failed to offer any explanation to justify their non-compliance with the prescribed procedures. As held by the Supreme Court in *People vs. Frondoza* (591 SCRA 407, 418 [2009]), thus:

"Also, fatal in the prosecution's case is the failure of the arresting officers to take a photograph and make an inventory of the confiscated materials in the presence of Frondoza. xxx

Clearly, none of the statutory safeguards mandated by Rep. Act No. 9165 was observed. Hence, the failure of the buy-bust team to comply with the procedure in the custody of the seized drugs raises doubts as to its origin."

As emphasized earlier, the corpus delicti and the fact of its existence is vital to a judgment of conviction. Case law teaches that the identity of the seized drugs is commonly resolved by a scrutiny of the chain of custody of the said drugs. (*People vs. Bernardino*, 602 SCRA 270, 289 [2009]) Thus, the "chain of custody" rule.

Section 1(b) of 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) which implements RA 9165 defines "chain of custody" as follows:

"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."

Consistency with the "chain of custody" rule requires that the "marking" of the seized items - to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence - should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation (*People vs. Sanchez*, 569 SCRA 194, 218 [2008])

In the instant case, evidentiary records show that the marking was not done immediately after the Appellant's arrest. PO1 Anzures testified that the marking was done at their office by PO2 Hipolito when he turned over the same to the latter. (TSN dated June 5, 2007, p. 16) Although there was this testimony regarding the marking of the shabu, recorded evidence is bereft of any showing that it was done in the presence of the Appellant. Evidence only disclosed that the marking was done in the presence of PO1 Anzures as stated in *Pinagsamang Sinumpaang*

Salaysay dated March 18, 2005. (Records, p. 4)

Interestingly, PO2 Hipolito who allegedly made the marking on the plastic sachet failed to state that he did the marking of the shabu. Witness the following:

"Q: How were you able to investigate the case of the said accused?

A: After he was turned over to me [Appellant] together with one plastic sachet containing white crystalline substance and two pieces of P100.00 bills, I prepared a request for laboratory examination, ma'am.

Q: Who turned over to you the person of the accused as well as the evidence subject matter of this case?

A: PO1 Anzures, ma'am,

xxx xxx xxx" (TSN dated October 2, 2007, p. 3)

Another observation which casts doubts on the identity of the corpus delicti is the condition upon which PO2 Hipolito received the plastic sachet from PO1 Anzures. PO1 Anzures declared in open court that the small plastic sachet was placed in a bigger plastic sachet which was provided by PO2 Hipolito, to wit:

"Q - You mentioned that you bought a plastic sachet of shabu from the accused and you also mentioned in your testimony that you were able to identify that sachet thru the markings you made on it and you even narrated to this Court the markings that were placed on the plastic sachet. Showing to you a plastic sachet, tell us what relation this plastic sachet has to the one you said you bought from the accused?

A - This is the shabu that I bought, ma'am. This was [the] plastic sachet, your Honor, [which] was previously marked as Exh. C-1, your Honor.

xxx xxx xxx

Q - Was this in the same stage when you bought this from the accused?

A - Yes, ma'am, but it was sealed later.

Q - Would you know. Mr. Witness, who provided this bigger plastic sachet?

A - Yes, ma'am.

Q - Who?

A - The investigator, ma'am." (TSN of PO1 Anzures dated June 5, 2007, pp. 21-22)

On the other hand, PO2 Hipolito testified that the seized evidence was in a bigger plastic sachet when it was turned over to his custody. Thus:

"Q - I'm showing to you this bigger plastic sachet with a smaller sachet inside it, please go over the same and tell us if this is the plastic sachet which was turned over to you?

A - This is the one, ma'am.

Q - When you received it. was it already enclosed with this bigger plastic sachet?

A - Yes, ma'am." (TSN of PO2 Hipolito dated October 2, 2007, p. 6)

All told, the prosecution failed to show how the integrity and evidentiary value of the item seized had been preserved. While the defense of denial on its own is inherently weak, the conviction of an accused must rely on the strength of the prosecution's evidence and not on the weakness of his defense. (People vs. Obmiranis, 574 SCRA 140, 158 [2008]) Thus, the Appellant's acquittal is in order.

WHEREFORE, premises considered, instant appeal is GRANTED. The appealed decision dated October 17, 2008 of the Regional Trial Court (RTC), Branch 123 of Caloocan City in Crim. Case No. C-72798 is REVERSED and SET ASIDE. Accordingly, accused-appellant ARNOLD MANALANG Y DE LEON is hereby ACQUITTED on reasonable doubt and is ordered immediately released from detention, unless he is confined for any other lawful cause.

SO ORDERED.

Villamor and Gaerlan[*], JJ., concur.

[*] Acting Junior Member per Office Order No. 350-10-ABR dated November 15, 2010.

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