

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT MAÑO Y VILLARENTE, ACCUSED-APPELLANT.

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

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

On appeal is the Decision dated March 12, 2013 of the Regional Trial Court (RTC), Branch 120 of Caloocan City, convicting accused-appellant Robert Maño y Villarente (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, this court finds and so holds that:

(1) In Crim. Case No. C-85026, accused Robert Maño y Villarente GUILTY beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00); and

(2) In Crim. Case No. C-85027, accused Johnny Romero y Dela Cruz is hereby ACQUITTED.

The drugs and drug paraphernalia subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.” (Rollo, pp. 47-48)

In an Information (Records, p. 1) dated October 5, 2010, appellant was charged of violating Section 5, Article II of RA 9165. The accusatory portion thereof reads:

“That on or about the 2[nd] day of October, 2010 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to PO2 NORMITO B. TAPON, posed as buyer, METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.03 gram, without corresponding license or prescription therefore, knowing the same to be such.

Contrary to Law.” (Ibid.)

When arraigned on October 20, 2010, appellant pleaded not guilty to the offense charged. (Records, p. 87) After the pre-trial was terminated (Records, p. 91), trial on the merits thereafter ensued.

The prosecution presented PCI Stella G. Ebuén, PO2 Normito Tapon, PO2 Herbert Bagain, Jr. and PO3 Ariosto Rana, as its witnesses. The prosecution's version, summarized from the testimonies of the witnesses:

On October 2, 2010, PO2 Norberto Tapon (hereinafter PO2 Tapon) was on duty at the District Anti-Illegal Drug Special Operation Task Group (DAID-SOTG), Northern Police District, Larangay Street, Caloocan City, received a report from a confidential informant about the rampant selling of “shabu” of one alias Kim and alias Boy. The information was relayed to their Chief, P/Chief Insp. Arnold Thomas C. Ibay who immediately ordered the

formation of an entrapment team. PO2 Tapon was designated as the poseur-buyer, PO1 Herbert Bagain, Jr. as his back-up officer while other operatives joined as members of the team. A Php500.00 bill with serial number FR-917042 was given to PO2 Tapon. The team also prepared a coordination sheet from the Philippine Drug Enforcement Agency (PDEA).

After the preparation of the pertinent documents, the team then proceeded to Masagana Street, Caloocan City, the target area. When the team arrived thereat, they instructed the confidential informant to verify the presence of the suspects and if they are currently engaged in the sale of illegal drugs. After fifteen (15) minutes, the informant returned and informed them that only alias Kim was present at the area. With said information, the team had a final briefing where the pre-arranged signal was agreed upon, which was the waving of PO2 Tapon's right hand at PO1 Bagain, Jr. When the informant and PO2 Tapon passed along Masagana Street and while entering the target location at an end of an alley, they were approached by appellant. The informant introduced PO2 Tapon as someone who will buy drugs. The appellant then asked PO2 Tapon how much he will buy, to which he replied, worth Php500.00. Appellant asked for the money from PO2 Tapon and the latter gave the marked Php500.00 bill. Appellant then told them to just wait and the former walked towards an open door. After a few seconds, appellant came back and handed one small plastic sachet to PO2 Tapon containing white crystalline substance. At that instance, PO2 Tapon waved his right hand as the pre-arranged signal to his back-ups. Upon seeing the signal, PO1 Bagain, Jr. and the rest of the team rushed toward PO2 Tapon. PO2 Tapon immediately presented the small plastic sachet to PO1 Bagain, Jr. and requested the latter to accompany him to enter the open door where appellant went. It was thereat that they saw appellant and co-accused Johnny Romero (hereinafter Romero). Forthwith, PO2 Tapon and PO1 Bagain, Jr. introduced themselves as police officers. The marked money was recovered from appellant after he was ordered to produce the same. After recovering the buy-bust money, PO2 Tapon placed his initials "NBT." The recovered plastic sachet and drug paraphernalia were likewise placed with markings. Thereafter, appellant and Romero were arrested and handcuffed. They were apprised of their violation of RA 9165 and were informed of their constitutional rights.

The team tried to make an inventory of the items at the crime scene, but there were drunk persons around so they decided to proceed to the police station. The team turned over appellant and Romero as well as the recovered pieces of evidence to the investigator, PO3 Ariosto Rana (hereinafter PO3 Rana).

After the turn-over to PO3 Rana, an inventory of the seized items was conducted. The request for the laboratory examination of the confiscated items as well as the request for drug test of appellant and Romero, were thereafter brought by PO3 Rana to the PNP Crime Laboratory. The laboratory examination on the specimens submitted tested positive for methylamphetamine hydrochloride, popularly known as shabu. The drug test on appellant and Romero also showed positive result for the presence of shabu.

To rebut the allegations of the prosecution, the defense presented the appellant and Romero, whose testimonies may be summarized as follows:

Appellant testified that on the date of the alleged incident, he was at the University of the East (UE) Subdivision along Masagana Street, Caloocan City, and that he was cooking when armed policemen suddenly arrived. He further testified that said armed policemen, later identified as the arresting officers, were allegedly looking for a man named "Bogart." He informed them that he does know of any "Bogart" and that his name is Robert. The policemen then frisked him and despite the fact that nothing was recovered from him, the policemen invited him to the precinct for an interview. He, along with his friend "Mayo" and Romero who were with him at that time were then boarded on a vehicle and were brought to the precinct. While on their way to the precinct, the policemen still insisted on determining the whereabouts of "Bogart" who was allegedly selling shabu while he repeatedly claimed that he does not know the person that they were looking for. Upon arrival at the precinct, the

policemen demanded money from him worth Fifty Thousand Pesos (P50,000.00) but he told them that he will not be able to produce the required money.

On the other hand, Romero testified that on the date of the incident, he went to his neighbor's house to collect payment for the electric bill as they were sharing the said expense. However, when he arrived thereat, the house was empty but the door was open. He learned from another neighbor that the occupant of said house was accompanying his co-worker. So, he went out and closed the door. Suddenly, a man who was accompanied by another man arrived and instructed him to open the door, to which he refused. He was then invited by the man, who was later identified as a policeman, and was told to go with him and that they will talk about it later. He was then frisked but nothing was recovered from him. Despite thereof, he was made to board a vehicle and was brought to Langanay precinct. He was then brought to a hallway and after a while was called along with appellant, whom he met for the first time and their photographs were taken. Thereafter, he was brought back to the hallway and it was there that he learned that he was being charged for violating RA 9165.

After trial on the merits, the RTC gave full faith and credit to the testimonies of the prosecution witnesses and upheld the presumption applied in cases involving violation of Dangerous Drug Acts of regularity in the performance of duty by public officers conducting anti-narcotics operations when the police officers have no motive in testifying falsely against an accused. It ratiocinated that against the positive testimonies of the prosecution witnesses, appellant's defense of denial, unsubstantiated by any credible and convincing evidence, must necessarily fail. It then ruled that the prosecution sufficiently established appellant's guilt beyond reasonable doubt.

The RTC, however, acquitted Romero of illegal possession of drug paraphernalia. It ruled that the prosecution's evidence is insufficient to prove his guilt of the offense charged against him.

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

“I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION 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.

The Office of the Solicitor General (OSG) meanwhile argues that the guilt of appellant has been proven beyond reasonable doubt. It asserts that RA 9165 and its Implementing Rules and Regulations (IRR) do not require the

presentation of all persons who came in contact with the seized drugs. It further asserts that there was substantial compliance with RA 9165 and its IRR as regards the preservation of the integrity of the seized illegal drugs.

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 view of the nature of buy-bust operations and the resulting preventive procedural safeguards crafted in RA 9165, courts are exhorted to tread carefully before giving full credit to the testimonies of those who conducted the operations. While compliance with the prescribed procedure is stringent, it is justified in view of the basic principle that penal laws are construed strictly against the government and liberally in favor of the accused. (People vs. Umipang, 671 SCRA 324, 336, 339 [2012]).

Section 21(1) of R.A. 9165 expressly requires that:

“(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 further explains the requirement as follows:

“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. — . . . :

(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, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at 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 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.” (Emphasis supplied)

While noncompliance with the prescribed procedure would not automatically result in the acquittal of the accused, it is required, for the saving clause to apply, however that: (1) the noncompliance is on justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. (People vs. Nacua, 689 SCRA 819, 835 [2013]; People vs. Umipang, supra, pp. 337-338).

Under the law, the inventory and photographing of the seized items must be conducted in the presence of a representative from the media, the Department of Justice (DOJ) and from any elected public official. (People vs. Umipang, supra, p. 351) The law further requires that these representatives are required to sign copies of the inventory.

Although records show that an inventory of the seized items (Records, p. 18) was conducted, there were lapses in the conduct thereof. It must be noted that PO2 Tapon and PO1 Bagain, Jr. both declared in open court that a barangay kagawad was present when they conducted the inventory. (TSN of PO2 Tapon dated June 15, 2011, p.

12; TSN of PO1 Bagain, Jr. dated October 26, 2011, p. 12) However, the inventory receipt does not bear the signature of the barangay kagawad who allegedly witnessed the inventory. (Records, p. 18) The full name of the barangay kagawad was not even indicated therein. (Ibid.)

There was also no representative from the DOJ when the inventory was conducted and the prosecution failed to offer any justifiable reason for failing to get in touch with the DOJ. Thus, for failure to justify non-compliance with the prescribed procedure under Section 21(a) of the IRR of RA 9165, We hold that the saving clause under said provision should not be applied in this case. It must be emphasized that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21 (1) of RA 9165 (People vs. Garcia, 580 SCRA 259, 266-267 [2009]) or that there was a justifiable ground for failing to do so. (People vs. De la Cruz, 570 SCRA 273 [2008])

The prosecution also failed to present a certain Maeng Santos, representative from the media, on the witness stand to testify on the circumstances surrounding the preparation and signing of the Inventory Receipt. Such failure casts doubt on the integrity and authenticity of the corpus delicti.

Truly, it is the preservation of the integrity and evidentiary value of the seized items that is of utmost importance in determining the admissibility of the evidence presented in court, especially in cases of buy-bust operations. The detailed procedure required to be followed was enacted in order that the integrity and evidentiary value of the confiscated items would not be compromised. If the arresting officers are unable to comply with the requirements, they are under obligation to explain why the procedure was not followed and prove that the reason provided a justifiable ground. (People vs. Ancheta, 672 SCRA 604, 617-618 [2012])

Any gap in the chain of custody of the prohibited substance renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt. (People vs. Umipang, supra, p. 339)

The lapses in the police officers' operation produced serious doubts on the integrity and identity of the corpus delicti. Thus, the Court is constrained to resolve the doubt in favor of the appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt. (People vs. Umipang, supra, p. 356)

WHEREFORE, the appeal is GRANTED. The Decision dated March 12, 2013 of the Regional Trial Court (RTC), Branch 120 of Caloocan City in Crim. Case No. C-85026, convicting accused-appellant Robert Maño y Villarente is hereby SET ASIDE. Accused-appellant Robert Maño y Villarente is ACQUITTED on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby ORDERED to immediately RELEASE accused-appellant from custody, unless he is detained for any other lawful cause.

SO ORDERED.

Lopez, and Inting, JJ., concur.

[*] Also appears as Robert Maño y Villorente in some parts of the records.

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