

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO “BIMBIM” JUMAO-AS, ACCUSED-APPELLANT.

Ponente: DIY, J.

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DIY, J.:

On Appeal is the Decision[1] dated November 19, 2009 rendered by Branch 13, Regional Trial Court (RTC) of Cebu City, 7th Judicial Region, in Criminal Case No. CBU-75944 wherein accused-appellant ROMEO “BIMBIM” JUMAO-AS was found guilty beyond reasonable doubt of violation of Section 11, Article II, of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the assailed decision reads:

WHEREFORE, judgment is hereby rendered finding accused ROMEO “BIMBIM” JUMAO-AS GUILTY beyond reasonable doubt of the crime of possession of 11.27 grams of Shabu, a dangerous drug, and sentences him to TWENTY (20) YEARS AND ONE (1) DAY TO LIFE IMPRISONMENT, plus fine in the amount of P400,000.00.

The 28 packs of shabu weighing 11.27 grams and marked as Exhibit B, for the prosecution are hereby ordered, CONFISCATED, in favor of the government and DESTROYED pursuant to the Provision of RA 9165.

SO ORDERED.

The Antecedents

On January 30, 2006, an Information was filed with the Regional Trial Court, docketed as Criminal Case No. CBU-75944,[2] the accusatory charge reading as follows:

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That on January 28, 2006 at about 4:30 A.M in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused with deliberate intent and without being authorized by law, did then and there have in possession and under his control TWENTY EIGHT (28) SMALL HEAT-SEALED PLASTIC PACKS HAVING A TOTAL WEIGHT OF 11.27 GRAMS CONTAINING WHITE CRYSTALLINE SUBSTANCE, locally known as “SHABU”, a dangerous drug.

CONTRARY TO LAW.

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During his arraignment, herein accused-appellant pleaded not guilty to the charge.[3]

A pre-trial conference[4] was conducted on December 20, 2007. Thereafter, trial on the merits ensued.

Version of the prosecution:

To prove its case, the prosecution presented the following witnesses: PO2 Roy Carlo Veloso and PO3 Benigno Andrew Ilagan of IDMB, CCPO.[5] The testimony of Police Chief Inspector Mutchit Salinas, Forensic Chemical Officer, was dispensed with since the defense admitted her expertise as well as the existence of both the seized

illegal items and chemistry report.

The facts as culled from the records and testimony of the prosecution witnesses are as follows:

On January 28, 2006, at around 4:30 o'clock early in the morning, the search warrant[6] issued by Branch 15, RTC of Cebu City against Bimbim Jumao-as ("Bimbim", for brevity) was implemented by police operatives at Bimbim's residence located at Sitio Dita, Brgy. Pulang Bato, Cebu City. The police operatives were composed of P/Supt. Pablo Labra, PCI Aurelio Sanchez, (PCI Sanchez),[7] PO3 Pandong,[8] PO3 Andrew Ilagan, PO2 Edward Abatayo, PO3 Corderos,[9] and some personnel from the Vice Control Section of Cebu City Police Office.[10] Barangay Tanod Bienvenido Coca[11] of Pulang Bato was invited to witness the search.[12] PO2 Roy Carlo Veloso and PO3 Benigno Andrew Ilagan were designated as the recorder and searcher, respectively.[13] The house target of the search was a single story house with a basement.

Upon arriving at the house, PCI Sanchez knocked on the door. Upon opening the door, Bimbim was immediately informed by PCI Sanchez that a search warrant was issued against him.[14] PCI Sanchez handed over a copy of the search warrant to Bimbim.[15] After the latter read the same, he permitted the police operatives to search his house.[16]

PO3 Ilagan, started searching inside the house in the presence of PO2 Veloso, Barangay Tanod Bienvenido Coca, and Bimbim.[17] The search was conducted first at the upper ground floor of the house and thereafter at the basement where the room of Bimbim was located. In Bimbim's room, specifically underneath the pillows, PO3 Ilagan found 28 plastic packs containing white crystalline substance. As standard procedure, PO3 Ilagan handed said 28 plastic packs to PO2 Veloso for recording.[18] PO2 Veloso made the marking and recording of the seized items at the police station.[19]

After said marking and recording, the 28 plastic packs containing white crystalline substance were submitted to the PNP Crime Laboratory for analysis. Consequently, Forensic Chemist Mutchit Salinas issued Chemistry Report No. D-182-2006 which stated that the seized specimen yielded positive for Methamphetamine Hydrochloride.[20]

For his part, PO3 Ilagan testified that the police operatives barged into the house target of the search upon hearing a commotion coming from inside. This was immediately after PCI Sanchez knocked on the door five times and stated their purpose.[21]

Version of the defense:

To refute the accusations leveled against accused-appellant, the defense solely presented accused-appellant himself, Romeo "Bimbim" Jumao-as.

The defense presented a different version of the incident. In the early morning of January 28, 2006, at about 4:30 o'clock, Bimbim was sleeping at the house of his aunt as he was the one in charge of tending his aunt's pigs. Suddenly, Bimbim heard a loud noise coming from a vehicle which prompted him to go out of his aunt's house and to check what it was.[22] Bimbim then saw an L-300 van parked in front of his parents' house which is located approximately five meters away from his aunt's house.[23] While Bimbim was walking towards his parents' house, he saw police officers enter the same. At the same time, two of the police officers, one of whom was identified as PO2 Veloso, approached and handcuffed Bimbim.[24] Bimbim asked the police officers what crime he had committed but instead of answering his question, the police officers just ordered him to board the van.[25] Bimbim merely learned later on from the driver of the L-300 van that the police officers were searching the house by virtue of a search warrant issued against him.[26]

As mentioned hereinabove, on November 19, 2009, the court a quo rendered the assailed Decision[27] finding accused-appellant guilty beyond reasonable doubt of the crime of violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On January 20, 2010, a Notice of Appeal[28] was filed by accused-appellant.

On March 20, 2010, accused-appellant filed his Appellant's Brief[29] assigning the following errors - -

I.

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND UNRELIABLE TESTIMONIES OF THE ARRESTING OFFICERS.

II.

THE TRIAL COURT ERRED IN CONVICTING APPELLANT DESPITE THAT THE INTEGRITY OF THE CORPUS DELICTI WAS DUBIOUS.

III.

THE TRIAL COURT ERRED IN FINDING THAT THE POLICE OFFICERS ACTED REGULARLY IN THE PERFORMANCE OF THEIR DUTY.

IV.

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN BEYOND REASONABLE DOUBT ACCUSED-APPELLANT'S GUILT.

In his Appellant's Brief,[30] accused-appellant strongly asserts that he should not have been convicted of the crime of violation of Section 11, Article II of Republic Act No. 9165.

First, accused-appellant claims that there are material and substantial inconsistencies in the testimony of the prosecution witnesses, PO2 Veloso and PO3 Ilagan, which could seriously affect the credibility of their testimony, to wit:

- PO2 Veloso testified that it was accused-appellant who opened the door, while PO3 Ilagan testified to the contrary, that the police officers barged into the house target of the search immediately upon hearing a commotion coming from inside the house immediately after PCI Sanchez knocked on the door five times and stated their purpose; and
- PO2 Veloso testified that he marked the allegedly seized evidence at the house subject of the search, while PO3 Ilagan stated that the marking was done at the police station.[31]

Second, accused-appellant, asserts that the illegal items purportedly seized from accused-appellant are dubious due to the following procedural lapses:

- The marking of the illegal items seized were not made in the presence of accused-appellant and in the presence of a representative from the media and the department of justice, and any elected public official in violation of par. 1, Section 21, Article II of RA 9165; and
- There was no photograph taken of the illegal items purportedly seized from accused-appellant.

Aside from the above-mentioned procedural lapses, accused-appellant avers that the prosecution failed to establish that the police officers took the necessary precautions in ensuring that there had been no change in the condition of the items allegedly seized from accused-appellant and that there was no opportunity for someone not in the chain of custody to have been in possession of the items seized.

The Ruling of the Court

The appeal is meritorious.

No less than Section 14, Article III of the Constitution mandates:

Section 14. xxx (1)

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved xxx

(Emphasis ours)

The principal effect of the guarantee of presumption of innocence is that no person shall be convicted unless the prosecution has proved him guilty beyond reasonable doubt.[32] Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. Nevertheless the burden of proof still rests on the state. The accused, if he so chooses, need not present evidence. He merely has to raise a reasonable doubt and whittle away from the case of the prosecution. The constitutional presumption of innocence demands no less.[33]

After an assiduous assessment of the evidentiary records, this Court is not convinced that the prosecution has presented sufficient evidence to engender that moral certitude exacted by our Constitution to prove the guilt of the accused. The prosecution miserably failed to establish an unbroken chain of custody of the allegedly seized contraband from accused-appellant.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[34] which implements R.A. No. 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 used in court as evidence, and the final disposition.

(Emphasis Ours)

Furthermore, in the case of *People v. Dela Cruz*,[35] the Supreme Court held:

In *Lopez v. People*, we had the occasion to expound on the chain of custody rule, thus:

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. It would include testimony about every link in the chain, from the moment the item was picked 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.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham v. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

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 reluctantly 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. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

Thus, the corpus delicti should be identified with unwavering exactitude.

(Emphasis Ours)

The chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. To this end, the prosecution must ensure that the substance presented in court is the same substance seized from the accused.[36]

In the case at bench, the chain of custody was not established. Nebulous can only be the description of the evidence on how the contraband was handled immediately after the alleged seizure and confiscation. The prosecution failed to establish: 1) how the contraband was handled from the moment it was confiscated until the moment the marking was done at the police station; and 2) that no one had access to the specimen to avoid it from being compromised. Clearly, said omission made by the prosecution in establishing every link in the chain constitutes a gap upon which it injects reasonable doubt as to the integrity of the evidence. While it is true that the rule allows marking of evidence to be done in the nearest police station, this, however, contemplates a case of warrantless searches and seizures.[37] Thus, failure to comply with the marking of evidence immediately after confiscation absent any explanation entertains serious doubts as to whether the prohibited drugs were indeed found in accused-appellant's house considering that there were even no other witnesses presented by the prosecution to prove the same. It is by the same doubt that constrains this Court to acquit accused-appellant. Establishing every link of the chain of custody would have been the only assurance that the incrimination of accused-appellant by the court a quo for the very serious crime had been legitimate and insulated from either invention or malice.

It also bears stressing that the omission of the police officers to comply with the inventory and photograph requirements under Sec. 21 of R.A. 9165 exposed another weakness of the evidence of guilt, viz:

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.

(Emphasis Ours)

Moreover, the Implementing Rules and Regulations of R.A. No. 9165 further elaborate on the above inventory and photograph requirements by providing under Section 21(a) that:

(a) The apprehending office/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.

It is true that jurisprudence teems with pronouncements from the Supreme Court that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused-appellant's arrest illegal or the items seized or confiscated from him inadmissible.[38] As a matter of fact, Republic Act No. 9165 and its IRR both state that non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the corpus delicti was preserved.[39] However, non-compliance with the above-cited procedure, to be excusable, must be justified by the police officers themselves.[40] In the case before Us, it is not only evident from the records that procedural requirements were never complied with but there was even no justification tendered by both PO2 Veloso and PO3 Ilagan for their non-compliance. Thus, the exception as provided for under the law is inapplicable. Therefore, the absolution of accused-appellant should follow for this Court cannot deny that the observance of the procedure would have been the only assurance that accused-appellant's incrimination in the crime was not invented or tainted with malice.

In this connection, the Court would like to state that the unexplained non-compliance with the procedures provided under Section 21, R.A. No. 9165 for preserving the chain of custody of the dangerous drugs has frequently caused the Supreme Court to absolve those found guilty by the lower courts. The rulings in *People vs. Santos, Jr.*, *People vs. Nazareno*, and *People vs. Orteza*[41] are in point, viz:

In *People v. Orteza*, the Court citing *People v. Laxa*, *People v. Kimura* and *Zarraga vs. People*, reiterated the ruling that the failure of the police to comply with the procedure in the custody of the seized drugs raises doubt as to its origins.

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As stated by the Court in *People v. Santos, Jr.*, failure to observe the proper procedure also negates the operation of the presumption of regularity accorded to police officers. As a general rule, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.

While 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 is merely just that—a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.[42]

(Emphasis Ours)

All the foregoing certainly proves that the corpus delicti was not credibly proved because the prosecution failed to establish an unbroken chain of custody, rendering the seizure and confiscation of methamphetamine hydrochloride open to doubt and suspicion. Hence, the incriminatory evidence should not even pass judicial scrutiny.

Moreover, notwithstanding the fact that the evidence of the defense is weak and uncorroborated, well-settled is the rule is that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense.[43]

We thus hark back to the constitutional doctrine that the state carries the burden of proof in establishing the guilt of the accused beyond reasonable doubt, and it is not incumbent upon him to disprove his guilt. If the prosecution fails in its burden, the accused must be discharged.

We, therefore, "take this opportunity to repeat this age-old observation and experience of mankind on the penological and societal effect of capital punishment: If it is justified, it serves as a deterrent, if injudiciously imposed, it generates resentment." [44]

IN VIEW WHEREOF, the Court hereby REVERSES the decision of the court a quo and ACQUITS the accused-appellant ROMEO "BIMBIM" JUMAO-AS of the crime charged, with costs de oficio. The Court orders his immediate release unless he is held for other causes. The Director, Bureau of Corrections, shall report to this Court his or her compliance herewith within five (5) days from notice.

The Division Clerk of Court is DIRECTED to immediately cause the ENTRY OF JUDGMENT in this case pursuant to Section 1(a) of Rule VII of the 2009 Internal Rules of the Court of Appeals.

SO ORDERED.

Delos Santos, E.L., (Chairperson) and Maxino, P.A.A., JJ., concur.

[1] Records, pp. 110 – 113.

[2] Records, p. 1.

[3] Ibid., p. 11 (Certificate of Arraignment).

[4] Ibid., pp. 30 - 31 (Pre-trial Order dated December 20, 2007).

[5] Stands for Investigation and Detective Management Branch, Cebu City Police Office.

[6] Records, p. 71 (Search Warrant dated January 26, 2008).

[7] Also referred to in the records as PSINP Aurelio Sanchez.

[8] The first name of PO3 Pandong is not mentioned in the records.

[9] The first name of PO3 Corderos is not mentioned in the records.

[10] TSN, April 14, 2009, pp. 2 – 4; TSN, June 4, 2009, p. 3.

[11] Also referred to in the records as Bienvenido Poca.

[12] TSN, April 14, 2009, p. 4.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid., p. 5.

[17] Ibid., pp. 5 – 6.

[18] TSN, April 14, 2009, p. 8.

[19] Ibid.

[20] Records, p. 6 (Chemistry Report No.: D-182-2006).

[21] TSN, June 4, 2009, p. 6.

[22] TSN, October 22, 2009, pp. 2 - 3.

[23] Ibid., p. 3.

[24] Ibid.

[25] TSN, October 22, 2009, p. 5.

[26] Ibid., p. 7.

[27] Supra, Note 1.

[28] Records, p. 117.

[29] Rollo, pp. 19 – 38.

[30] Supra, Note 25.

[31] PO2 Veloso testified at first that he marked the seized illegal items at the police station but during cross-examination, he testified that he made the marking at the house target of the search.

[32] Bernas, J.G., The 1987 Philippine Constitution: A Comprehensive Reviewer, 2006 ed., p. 148.

[33] People of the Philippines vs. Tapeda, G.R. No. 100354, May 26, 1995.

[34] People of the Philippines vs. Del Rosario, G.R. No. 188107. December 5, 2012.

[35] People vs. Dela Cruz, G.R. No. 181545, October 8, 2008, citing Lopez vs. People of the Philippines, G.R. No. 172953, April 30, 2008.

[36] People vs. Watamama, G.R. No. 194945 , July 30, 2012.

[37] People vs. Alcuizar, G.R. No. 189980 April 6, 2011.

[38] Zalameda vs. People, G.R. No. 183656, September 4, 2009.

[39] People vs. Gonzales, G.R. No. 182417, April 3, 2013.

[40] Supra, Note 35.

[41] People vs. Dela Cruz, G.R. No. 181545, October 8, 2008, citing People vs. Santos, Jr., G.R. No. 175593, October 17, 2007, People vs. Nazareno, G.R. No. 174771, September 11, 2007, and People vs. Orteza, G.R. No. 173051, July 31, 2007.

[42] Ibid.

[43] People of the Philippines vs. Besmonte, G.R. No. 103306, April 5, 1993.

[44] People of the Philippines vs. Lagmay, G.R. No. 125310, April 21, 1999.

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