

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL YABUT Y GABULE, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

Under review in this APPEAL is the Judgment[1] dated July 23, 2013 of the Regional Trial Court (RTC), Branch 25, Cagayan de Oro City in Criminal Case Nos. 2010-1246 and 2012-1247 finding accused-appellant, MICHAEL YABUT y GABULE, guilty beyond reasonable doubt for violation of Section 5 and Section 11 of Article II of R.A. 9165, respectively.

The facts of the case are as follows:

On December 14, 2010, at around 1:00 o'clock in the afternoon, a confidential informant (CI) arrived at the Philippine Drug Enforcement Agency (PDEA), Regional Office X to report that a certain "Butiti" was selling shabu at Barra, Macabalan, Cagayan de Oro City. After verifying the veracity of the report, the Regional Director authorized the creation of a team to conduct a buy-bust operation. Among the members of the buy-bust team were IO1 Odysseus Ceasar Justalero (Justalero), who was designated as poseur-buyer and IO1 Albert Orellan (Orellan), who was designated as the arresting officer. For the purpose of the buy-bust operation, the team prepared a Php 500.00 bill as buy-bust money and marked with Orellan's initials, "AEO". The team agreed that the pre-arranged signal would be Justalero's "missed call" to Orellan's mobile phone to indicate that the transaction with "Butiti" has been completed.

The buy-bust team proceeded to the house of "Butiti" at Barra, Macabalan at around 2:00 o'clock in the afternoon. Justalero and the CI were in the first vehicle; while Orellan and the rest of the team were in the second vehicle. The vehicles were parked around 20 meters from the house of "Butiti".

Upon reaching "Butiti"'s house, the CI called the former and had a short conversation with him. "Butiti" then invited the CI and Justalero inside the house. The CI introduced Justalero to "Butiti" as an interested buyer of shabu. After "Butiti" asked him how much shabu he wanted to buy, Justalero responded that he wanted P500.00 worth of shabu. Justalero then handed the marked money to "Butiti" who then pulled out a transparent plastic bag from his pocket, took out a smaller sachet from the plastic bag, and gave it to Justalero. After receiving the small sachet, Justalero made a "missed call" to Orellan's mobile phone. Orellan and the rest of the team rushed to the scene.

Orellan and his team introduced themselves to "Butiti" as members of the PDEA, apprised him of his constitutional rights, told him that he was being placed under arrest, and handcuffed him. The buy-bust team frisked "Butiti" and found on his person two (2) plastic bags - one containing two (2) sachets and the other containing eight (8) sachets, all containing white crystalline substance which they suspected to be shabu, an illegal drug. Orellan also recovered the marked money from "Butiti". Orellan then conducted an inventory of the items recovered, including the sachet that Justalero had purchased from "Butiti". Orellan also placed identifying marks on all items recovered. PO1 Carin took photographs of the crime scene and the items recovered. All the seized

items were in the possession and custody of Orellan from the time he was in the house of "Butiti" to his arrival in their office until he turned them over to the crime laboratory. The buy-bust team booked "Butiti" and confirmed his identity as Michael Yabut y Gabule (accused-appellant).

A request for laboratory examination[2] was then prepared on the sachets seized. The laboratory examination was conducted by Forensic Chemist Police Senior Inspector Charity Peralta Caceres. Her Chemistry Report No. D-264-2010[3] revealed that the white crystalline substance seized proved positive for the presence of methamphetamine hydrochloride or shabu, a dangerous drug.

On the other hand, accused-appellant Michael Yabut y Gabule (Yabut) tells a different tale. He denied the accusation against him.

Yabut testified that on December 14, 2010, he was in his bedroom sleeping; that he was awakened by his mother as it was already 1:00 pm and he needed to cook for their store; that while he was cooking at the dirty kitchen, a man suddenly entered and poked a gun at him; that he even smiled at the man because he did not think that he would be arrested; that another man and woman entered the dirty kitchen; that the second man who was armed with an armalite ordered him to lie down on the ground; and that he was handcuffed after his wristwatch was removed.

Yabut further testified that some of the men who arrested him were wearing vests with PDEA markings while the others were wearing bonnets and caps; that one of the PDEA agents pulled out a cellophane and told him, "this is sachet of shabu, where is the four thousand marked money?"; that at the same time a man pulled the money from his pocket in the amount of P67.00; that in the process, he answered the men that he had no Four Thousand Pesos (P4,000.00); that the PDEA agent placed the cellophane on the table, pulled out from his wallet a P500.00 bill, and called the barangay officials.

Yabut furthermore testified that while waiting for the barangay officials, the men searched his bedroom and her mother's bedroom; that they found a piggybank, broke it, and took the coins; that they also took money they found inside the room; that later on, Barangay Kagawad Alcantara and Tanod Nacalaban arrived and took pictures; and that afterwards, the men took him to the PDEA office and the crime laboratory.

Yabut also presented the testimonies of Luzviminda Yabut and Lucia Borgoneous.

In two (2) separate Informations dated December 15, 2010, Yabut was charged for Violation of Sections 5 and 11, Article II of Republic Act No. 9165, to wit:

INFORMATION[4]

The undersigned Assistant City Prosecutor accuses MICHAEL YABUT y GABULE for Violation of Section 11, Article II of Republic Act No. 9165, committed as follows:

That on or about December 14, 2010, at more or less 2:30 o'clock in the Afternoon, at Barra, Macabalan, Cagayan de Oro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, willfully, unlawfully, criminally and knowingly have in his possession, custody and control Ten (10) small heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.26 grams; accused well-knowing that the substance recovered from his possession is a dangerous drug.

Contrary to law.

INFORMATION[5]

The undersigned Assistant City Prosecutor accuses MICHAEL YABUT y GABULE for Violation of Section 5, Article II of Republic Act No. 9165, committed as follows:

That on or about December 14, 2010, at more or less 2:30 o'clock in the Afternoon, at Barra, Macabalan, Cagayan de Oro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there, willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a poseur buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride, locally known as Shabu, a dangerous drug, in consideration of Five Hundred Pesos (Php 500.00) with Serial No. YX749998, with markings "AEO" at the lower right portion of the bill, which was previously marked for the purpose of the buy-bust operation.

Contrary to law.

Upon arraignment, Yabut pleaded not guilty to the two charges.[6] After the pre-trial, trial ensued.

On July 2, 2013, the court a quo rendered a Judgment finding Yabut guilty of violation of Sections 5 and 11, Article II of RA 9165. The dispositive portion of the Judgment provides:

WHEREFORE, premises considered, this Court finds that:

- In Criminal Case No. 2010-1246, accused, MICHAEL YABUT y GABULE is GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the Fine of Five Hundred Thousand Pesos [P500,000.00], without subsidiary penalty in case of non-payment of fine.

- In Criminal Case No. 2010-1247, accused, MICHAEL YABUT y GABULE is GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 11, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of imprisonment ranging from Twelve [12] years and one [1] day to Thirteen [13] years, and to pay the Fine of Three Hundred Thousand Pesos [P300,000.00], without subsidiary penalty in case of non-payment of fine.

Let the penalty imposed on the accused be a lesson and an example to all who have the criminal propensity, inclination and proclivity to commit the same forbidden act that crime does not pay, and that the pecuniary gain and benefit, as well as the perverse psychological well-being which one can derive from selling or manufacturing or trading drugs, or other illegal substance, or from using, or possessing, or committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted and penalized to the full extent of the law.

SO ORDERED.

Hence, accused-appellant Yabut's instant appeal raising the lone assignment of error[7], viz.:

THE COURT A QUO GRAVELY ERRED IN CONVICTING accused-APPELLANT OF THE OFFENSES CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Our Ruling

Yabut argues that the prosecution failed to establish the chain of custody over the confiscated items. Yabut contends that the chain of custody over the confiscated items was broken from the time the arresting officers had custody of the subject drugs up until the time the crime laboratory took possession over them; and from the time

the forensic chemist had custody over the subject drugs to the time she sent the subject drugs to the court.

We sustain Yabut's conviction.

Under Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, "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.

In the case of *People v. Llanita*[8], citing *People v. Kamad*[9], the Supreme Court had the opportunity to enumerate the different links that the prosecution must prove in order to establish the chain of custody, namely: First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

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.[10] "To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence." [11]

We find that the apprehending team was able to preserve the integrity of the subject illegal drugs and that the prosecution was able to present the required unbroken chain in the custody of the illegal drugs.

First, Justalero testified that after the transaction of sale between him and Yabut, and after giving Orellan the pre-arranged signal, the team rushed to the scene, frisked Yabut, and apprehended him. Inside Yabut's house, Orellan made an Inventory[12] of the seized illegal items and marked them with his initials.[13] Thereafter, the arresting officers brought accused-appellant and the seized items to the police station. The seized items, particularly the sachets containing shabu that were recovered, were in the possession and custody of Orellan.[14] On the same day, Orellan brought the seized illegal drugs (sachets of shabu) for examination at the PNP Crime Laboratory. He also brought Yabut there for the conduct of urine examination. The testimony of Orellan reads:

xxx

Q:

During your further investigation, what else did you do?

A:

We booked him, Sir, and we entered in the logbook the entire incident. We also prepared a laboratory examination request for the specimen we have confiscated and we also brought the accused to the PNP Crime Lab for drug test.

Q:

From your office up to the Crime Lab, who was in possession of these items that you are referring to?

A:

They were still in my possession.

Q:

Can you remember if you were accompanied by any member of the team while delivering those items at the PNP Crime Lab?

A:

I was accompanied together with the poseur-buyer, the driver, the arrested person and one security personnel.

Q:

Were the items still placed in the same evidence bag from your office up to the time it was finally brought to the PNP Crime Lab?

A:

The same condition, Sir.

Q:

Do you remember if it is passed to any other members of the team or any personnel of your office before you finally brought it to the PNP Crime Lab?

A:

No, Sir.

Q:

In other words, none of the members of the team as well as the personnel of the PDEA had the opportunity to touch any of these items subject of this instant case?

A:

None, Sir.

Q:

Tell us who at the PNP Crime Lab received this request for laboratory examination wherein these items were attached for submission to the PNP Crime Lab?

A:

It was received by police officer whose name I cannot read but he was authorized to receive whatever we submit to their office.

Q:

Was there any evidence proving that it was allegedly received by that person at the PNP Crime Lab for example some kind of rubber stamp.

A:

There was a rubber stamp and it was reflected thereat who received and by the one who transported.

xxx

Q:

And the remark received by PSI Caceres/PO1 Dagatan, tell us if any of these two persons actually received this specimen together with the request?

A:

This was received by Dagatan[15]

xxx

From the foregoing, the chain of custody remained unbroken from the time the items were seized from Yabut up until the seized items were brought to the crime laboratory for examination.

It is worth noting that during the trial, the taking of the testimony of the forensic chemist PSINSP. Charity Peralta Caceres, who examined the seized sachets of suspected shabu, was dispensed with by the parties. The defense admitted the following: “a) that PSI Caceres is an expert witness; b) That on December 14, 2011, she received a letter request from Director Edwin Layese of the PDEA for the examination of the sachet marked “BB-1214-10” and another ten sachets containing white crystalline substance attached thereto, and another letter-request for drug examination of the urine sample of the accused; c) That she conducted the laboratory examination as requested and reduced her findings into writing under Chemistry Report No. D-264-2010 and Chemistry Report No. DTCRIM-238-2010, and; d) That she brought with her to Court her findings, the letters-request, and the specimen for identification and marking.”[16]

Yabut therefore erred when he argued that the prosecution failed to explain and establish the post chemical examination custody over the seized items as the prosecution did not present the forensic chemist to testify. As correctly argued by the Solicitor General, “accused-appellant failed to question the veracity of PINS Caceres' claims regarding the provenance of the questioned letter-request. Having failed to cross-examine PINS Caceres, and in fact, having admitted the above matters, accused-appellant cannot now call into question the link between the arresting officers and the crime laboratory”[17]. Also, Yabut in fact admitted that PSI Caceres “brought with her to Court her findings, the letters-request, and the specimen for identification and marking”, thus, in effect admitting that this was the same specimen submitted to her by Orellan for qualitative examination. Additionally, the OSG was correct in arguing that “when a party desires for the court to reject the evidence offered, he must

state so in the form of an objection. Upon failure to do so, the party is deemed to have waived his right to make such an objection”[18].

Moreover, it must be remembered that testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain.[19] As such, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. The integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered.[20] In this case, accused-appellant has the burden to show that the evidence, from the time it was examined by the forensic chemist up to the time that it was presented in court, was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers, as well as a presumption that said public officers properly discharged their duties.[21]

To establish the crime of illegal sale of shabu as defined and punished under Section 5, Article II of Republic Act No. 9165, the Prosecution must prove beyond reasonable doubt (a) the identity of the buyer and the seller, the identity of the object and the consideration of the sale; and (b) the delivery of the thing sold and of the payment for the thing.[22] The commission of the offense of illegal sale of dangerous drugs, like shabu, requires simply the consummation of the selling transaction, which happens at the moment the buyer receives the drug from the seller. In short, the Prosecution must show that the transaction or sale actually took place, and present in court the thing sold as evidence of the corpus delicti.[23]

Anent the charge for illegal possession against accused-appellant, the elements necessary for the prosecution of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[24] The Supreme Court elucidated on the nature of this offense in the case of *People v. Tira*[25], viz.:

x x x This crime is mala prohibita, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (animus possidendi) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

In the case at bar, the prosecution was able to prove the presence of each and every element of the crimes by the testimonial, documentary and object evidence presented. Thus, on the basis of the aforesaid disquisition, We find no reason to set aside the Decision of the trial court.

WHEREFORE, the Judgment dated July 23, 2013 of the Regional Trial Court, Branch 25, Cagayan de Oro City in Criminal Case Nos. 2010-1246 and 2012-1247 is hereby AFFIRMED.

SO ORDERED.

Camello, J. Ch., and Perez, JJ., concur.

[1] Records, pp. 105-114, penned by Hon. Judge Arthur L. Abundiente.

[2] Records, p. 15

- [3] Records, p. 8
- [4] Records, Book I, p. 3
- [5] Records, Book II, p. 3
- [6] Records, Book I, p. 17 & Records, Book II, p. 17
- [7] Rollo, p. 15
- [8] G.R. No. 189817, October 3, 2012
- [9] G.R. No. 174198, 19 January 2010
- [10] Supra Note No. 15
- [11] Supra
- [12] Records, pp. 87-88
- [13] Transcript of Stenographic Notes (TSN), November 8, 2011, pp. 10-13
- [14] TSN, November 8, 2011, p. 14
- [15] TSN, August 8, 2011, pp. 13-15
- [16] Judgment, RTC, July 23, 2013
- [17] Rollo, Appellee's Brief, pp. 55-56
- [18] Supra
- [19] People v. Arriola, G.R. No. 187736, February 8, 2012
- [20] Supra
- [21] People v. Octavio, G.R. No. 199219, April 3, 2013
- [22] People v. Tapere, G.R. No. 178065, February 20, 2013
- [23] Supra
- [24] People v. Gutierrez, G.R. No. 177777, December 4, 2009
- [25] G.R. No. 139615, May 28, 2004

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