PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY ALOVERA Y CORDOVA ALIAS “GERMAN”, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This is an appeal from the Decision[1] dated November 8, 2010 rendered by the Regional Trial Court Sixth Judicial Region Branch 17, Roxas City in Criminal Case No. C-107-03, the dispositive portion of which, states:

> “WHEREFORE, premises considered, accused Jimmy Alovera is found guilty beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165, and he is hereby sentenced to suffer life imprisonment and to pay a fine of P500,000.00. He shall be credited in the service of this sentence with the period of his preventive detention.
>
> The subject dangerous drug must be turned over to the PDEA for destruction or burning immediately.
>
> SO ORDERED.”

The Antecedent Facts

Accused-appellant Jimmy Alovera y Cordova alias “German” was charged with violation of Section 5, Article II of Republic Act No. 9165 in an Information[2] dated April 28, 2003, the accusatory portion of which, states:

> “That on or about the 18[th] day of July 2002, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to a PNP poseur buyer two (2) heat-sealed transparent plastic packets containing Methamphetamine Hydrochloride (shabu), with a total weight of 0.04 grams, a dangerous drug, without the authority to sell and distribute the same.
>
> CONTRARY TO LAW.”

When arraigned on July 8, 2003, the accused, duly assisted by counsel and with the Information read to him in a dialect understood and spoken by him, pleaded not guilty to the offense charged against him.[3] Pre-trial was terminated on December 16, 2003.[4] Thereafter, trial on the merits ensued.

Evidence for the Prosecution

PCI Angela Baldevieso

On July 20, 2002, PCI Angela Baldevieso received a letter request for the laboratory examination of certain confiscated items. Both specimens yielded positive for methamphetamine hydrochloride or shabu.[5]

SPO1 Gaudencio Azarcon:

On July 18, 2002, SPO1 Gaudencio Azarcon's team was instructed to verify the rampant selling of illegal drugs at corner Illieta and McKinley. With him were SPO1 Anisco, PO3 Acielo and PO2 Buenvenida.

At 11:00 o'clock in the evening of that date, when the team reached the target place, Jimmy Alovera was seen

seeming to wait for some buyer. SPO1 Azarcon and PO2 Buenvenida approached the suspect if they could buy shabu at worth P200.00. Alovera took the money. He drew two sachets from his pocket and gave it to SPO1 Azarcon.[6]

SPO3 Rolando Anisco:

On July 18, 2002, at around 11:00 o'clock in the evening, SPO3 Rolando Anisco was part of the team who went to Barangay McKinley corner Illieta Street for a buy-bust operation. He acted as back-up along with PO2 Antonio Buenvenida.[7]

Evidence for the Defense

Jimmy Alovera:

On July 18, 2002, at 11:00 o'clock in the evening, Jimmy Alovera went home after drinking with his friends. On his way home, when he reached the corner of McKinley Street, all of a sudden a person appeared who pointed his gun and told him not to move.

While in a standing position with his hands raised, another person appeared who frisked Alovera's body and boxed his abdomen. Alovera knelt down from the impact. He received another blow on the left side of the body with his head hitting the pavement. The person said he had shabu. Thereafter, he was brought to the police station.[8]

Alan Bugtong:

On July 18, 2002, Alan Bugtong went home from a reception along with his drummer via a tricycle. Upon arrival at McKinley Street corner Illieta Street, he saw Jimmy Alovera emerging from Illieta Street area[9] who was met by a person who came from the back of the tricycle where Bugtong was riding.[10] The person poked a firearm against Alovera who raised his hands in response.

Another person suddenly arrived. He frisked Alovera but he parried his hands. Alovera was boxed in the abdomen and dropped to the ground on his knees. He was again punched at the side and dropped his head to the ground. The person turned his back. When he turned around, he said the shabu was there. Alovera was handcuffed and boarded in a tricycle. The person who poked a gun at Alovera approached them to ask what they were doing in the area then they were told to go away.[11]

Findings of the Regional Trial Court

On November 8, 2010, the trial court rendered its Decision convicting the accused-appellant, to wit:

> “After a careful scrutiny of the evidence on record, the Court finds that the prosecution had established by clear and convincing evidence the guilt of the accused beyond reasonable doubt. The Court finds credible the testimony of police officers Azarcon and Anisco that Azarcon transacted with accused Alovera with the latter receiving two P100.00 bills from Azarcon and the handing to the police officer two sachets of suspected shabu on July 18, 2002, at 11:00 P.M., at the corner of Ellieta and McKinley Streets, Roxas City. The shabu weighing a total 0.04 grams was found positive for the test of Methamphetamine Hydrochloride as testified to by the forensic chemist.
>
> The defense of denial by the accused is a self-serving negative evidence, and thus inferior to the categorical and positive testimonies of prosecution witnesses. It is well-settled that testimonies of police officers are entitled to full faith and credit on the presumption that they have performed their duties in a regular manner in the absence of any countervailing evidence.

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> In sum, the prosecution has fully established the consummation of the sale of shabu between the poseur-buyer and the accused, who had no authority to sell, and that the substance recovered from the accused proved positive to the test of methamphetamine hydrochloride. Indeed, the foregoing elements have been clearly established and shown by prosecution evidence to the point of moral certainty.
>
> WHEREFORE, premises considered, accused Jimmy Alovera is found guilty beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165, and he is hereby sentenced to suffer life imprisonment and to pay a fine of P500,000.00. He shall be credited of this sentence with the period of his preventive detention.
>
> The subject dangerous drug must be turned over to the PDEA for destruction or burning immediately.
>
> SO ORDERED."

The accused-appellant promptly filed a Notice of Appeal[12] on January 24, 2011, which was given due course by the trial court per Order dated July 25, 2011[13].

This Court received the records of this case on April 23, 2013.[14] On May 6, 2013, the Court issued a Notice to File Brief[15]. Appellant Alovera submitted his brief[16] on December 13, 2013, while the appellee, through the Office of the Solicitor General, filed its brief[17] on April 30, 2014. Then, in a Resolution dated January 20, 2015, this case was declared submitted for decision.[18]

Assignment of Errors

Counter-Argument for the Appellee

The appellee argues that the trial court was correct in convicting the accused-appellant. The elements of the crime of sale of illegal drugs under Sec. 5, Art. II of R.A. 9165 have been proven beyond reasonable doubt through the positive testimonies of SPO1 Azarcon and SPO3 Anisco. The testimonies of appellant and his corroborating witness, Alan Bugtong, do not put a dent on such overwhelming evidence against appellant.

The appellee further submits that if indeed the appellant is innocent, the police officers who conducted the buy-bust operation must have been moved by improper or ulterior motive. The appellant has not offered any evidence of such motive.

The appellee likewise submits that the integrity and identity of the specimens have been preserved. Section 21 of R.A. No. 9165 has been complied with. As for the marking of the specimens marking, it is settled that the failure to do it immediately upon seizure is not fatal. The same is true for the purported delay in the transmittal of the seized drugs to the crime laboratory for forensic examination.

Ruling of the Court

The elements necessary in every prosecution for the illegal sale of shabu are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.19 Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of corpus delicti which means the "actual commission by someone of the particular crime charged."[20] The corpus delicti in cases involving dangerous drugs is the presentation of the dangerous drug itself.

In cases of illegal sale of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the corpus delicti. In People v. Alcuizar[21], the Supreme Court held:

> The dangerous drug itself, the shabu in this case, constitutes the very corpus delicti of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the corpus delicti must

> definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.
>
> Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,22 which implements the Comprehensive Dangerous Drugs Act of 2002, 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.

In Malillin v. People,[23] the Supreme Court explained the importance of the chain of custody:

> Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. 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. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in 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 was 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 posession of the 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.

In this case, the testimonies of SPO1 Gaudencio Azarcon and SPO3 Rolando Anisco are totally bereft of any detail as to how the chain of custody over the seized drugs were preserved. In fact, the prosecution, during the presentation of its evidence-in-chief, did not even bother to ask the police officers how they complied with Section 21 of R.A. 9165, nor presented in court an inventory of the drugs seized or even photographs thereof[24]. Otherwise stated, there is in this case a total absence of evidence to establish the chain of custody over the seized drugs.

The direct of testimony of SPO3 Anisco is hereunder quoted as follows:

> (Prosecutor Calvez): Were you able to execute the buy bust operation on July 18, 2002 in the evening together with Police Officers Gaudencio Azarcon and Antonio Buenvenida?
> (SPO3 Anisco): Yes, sir.
>
> Q: Were you able to see the accsued in this caseat the place where you conducted the buy bust operation?
> A: Yes, sir.
>
> Q: Can you tell the Honorable Court who acted as a poseur buyer that night?
> A: Gaudencio Azarcon, sir.
>
> Q: How about the other police officer in the person of Antonio Buenvenida?
> A: He acted as back-up, sir.
>
> Q: How about you?
> A: I also acted as look-outand back-up, sir.
>
> Q: In the evening, was Police Officer Gaudencio Azarcon able to buy something from the accused?
> A: Yes, sir.
>
> Q: Can you tell the Court what was that?
> A: Shabu, sir?
>
> Q: Why do you say, so?
> A: Because we have that sent to the crime laboratory, sir.
>
> Q: After the buy bust operation?
> A: Yes, sir.
>
> Q: And what was the result?
> A: Positive, sir.

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Q: Can you tell the Honorable Court what denomination did police officer Gaudencio Azarcon use in buying shabu from the accused?
A: Two (2) pieces of one hundred peso (P100.00) bill.

Q: Why do you say so?
A: Because that was recorded there at the police station, sir.

Q: If those two (20) pieces od one hundred peso (P100.00) bills will be seen by you again, can you still identify them?
A: Yes, sir.

Q: I am showing to you these two (2) pieces of one hundred peso (P100.00) bill which we already marked as Exhibits "D" and "E", can you tell the Honorable Court what relation have these to the one you saw which (sic) Police Officer III Gaudencio Azarcon used (sic) in buying shabu from the accused?

A: Yes, sir, these were the ones. (Witness identifying two (2) pieces of one hundred peso bill denomination that were previously marked as Exhibits "D" and "E", respectively, sir.

Q: From (sic) whom did Gaudencio Azarcon handed these two (2) pieces of one hundred peso bill that evening?
A: To Jimmy Alovera, sir.

Q: You said it was Jimmy Alovera. If that Jimmy Alovera will be seen by you again, will be able to identify him?
A: Yes, sir.

Q: If he is inside the courtroom now, can you point him to the Honorable Court?
A: Yes, that one sir. (Witness pointing to a person who when asked to identify himself, he identified himself as Jimmy Alovera.)

FISCAL CALVEZ:

That would be all for the witness."[25]

Likewise, the direct testimony of SPO1 Azarcon, hereunder quoted as follows, is bereft of any indication that the police officers complied with Section 21 of R.A. 9165. In fact, like in the testimony of SPO3 Anisco, the trial prosecutor failed to elicit questions that would have established the chain of custody over the seized drugs subject of this case:

"(Prosecutor Calvez): Were you able to talk to him on July 18, 2002? SPO1 Azarcon: Yes, sir, I transacted him.

Q: What did you tell him?
A: If I can buy shabu worth Two Hundred Pesos.

Q: What was his answer?
A: He replied, Okay. Then immediately he took my Two Hundred Pesos and subsequently drew from his pocket the two sachets of suspected shabuand immediately gave it to me.

Q: If that item you purchased from the accused that evening will be shown to you again, will you be able to identify it?
A: Yes, sir.

Q: I am showing to you, two sachets which is marked Exhibit "B" for the prosecution and tell this Honorable Court what is the relation of this to the one you purchased on the evening of July 18, 2002?

A: Yes sir, these were the two sachets I bought from the accused because of our mark “E-1” and “E-2”.

Q: You said you pay (sic) the accused by this item already marked Exhibit “B” for the amount of P200.00. Now, if those two pieces of P100.00 bills, will you be able to identify it?
A: Yes, sir.

Q: I am showing to you two pieces of P100.00 bills, kindly go over and look at this (sic) what relation has this to the one you paid to the accused that evening of July 18, 2002?
A: These were the money we used for transacting shabu because of their serial numbers were recorded at the police blotter before (sic) jumped off.

Pros. Calves: We would like to request, your Honor, that SW832489 be marked as Exhibit “D” for the prosecution.
Court: Mark it.

Pros. Calvez: And the other P100.00 bill with SN XE903896 be marked as Exhibit “E” for the prosecution.
Court: Mark it.

Q: And after Mr. Witness, you received the two sachets of shabu after paying the P200.00, what did you do?
A: I asked the suspect if he has any authority in possessing the same but I got no answer.

Q: What do you mean no answer?
A: He did not reply.

Q: He did not answer yes or no?
A: No, sir, he just simply nodded.

Q: If that person will be seen by you again from whom you bought shabu and you paid the P200.00 in the evening of July 18, 2002, will you be able to identify him?
A: Yes, sir.

Q: Please identify him?
A: The last fellow wearing yellow T-shirt (who identified himself as Jimmy Alovera).

Q: You said that since 1990 you were already a member of the PNP, Mr. Witness?
A: Yes, sir.

Q: What was you attire when you bought the two sachets of shabu in the evening of July 18, 2002?
A: Civilian attire.

Q: What was the situation of the place at corner Elieta and McKinley that evening?
A: It was silent.

Q: It was lighted?
A: Yes, sir.

Q: Why?
A: because at the corner there is (sic) a lamp post.

Q: When you said lamp post, what was the lighting?
A: Big bulb may be 50 watts and above.

Q: You mean coming from the post of Capelco?
A: Yes, sir.

Asst. City Pros. Calvez: I think, that will be all for the witness, you Honor.”[26]

As held in Malillin v. People,[27] to establish guilt of the accused beyond reasonable doubt in cases involving dangerous drugs, it is important that the substance illegally possessed in the first place be the same substance offered in court as exhibit. This chain of custody requirement ensures that unnecessary doubts are removed concerning the identity of the evidence. When the identity of the dangerous drug recovered from the accused is not the same dangerous drug presented to the forensic chemist for review and examination, nor the same dangerous drug presented to the court, the identity of the dangerous drug is not preserved due to the broken chain of custody. With this, an element in the criminal cases for illegal sale of dangerous drugs, the corpus delicti, is not proven, and the accused must then be acquitted based on reasonable doubt. For this reason, accused-appellant Alovera must be acquitted on the ground of reasonable doubt due to the broken chain of custody over the dangerous drug allegedly recovered from him.

Finally, the records of this case reveal that the accused-appellant has been in detention since May 23, 2003[28] or almost twelve (12) years in total. The People was deemed to have rested its case after the trial court admitted all of the prosecution's documentary and object evidence on May 19, 2009[29].

Section 23, Rule 119 of the Revised Rules of Criminal Procedure30 provides, that, “after the prosecution rests its case, the court may dismiss the action on the ground of insuffiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.”

What this means is that, with the obvious absence of evidence to estalish corpus delicti in this case, the accused-appellant Alovera need not have stayed a day longer in prison after May 2009, had the court a quo dismissed this case on demurrer in accordance with the said Section 23, of Rule 119.

Instead, the accused-appellant needlessly languished in prison for over five (5) more years.

WHEREFORE, the instant appeal is hereby GRANTED. The Decision dated November 8, 2010 rendered by the Regional Trial Court Sixth Judicial Region Branch 17, Roxas City in Criminal Case No. C-107-03 is hereby REVERSED and SET ASIDE. Appellant is hereby ACQUITTED on the ground of the failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately RELEASED from detention, unless he is being confined for another lawful cause. Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from his receipt of this Decision, the action he has taken.

SO ORDERED.

Lagura-Yap, M.B., and Lopez, J.Y., JJ., concur.

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[1] Original record, pp. 348-350. Penned by Hon. Edward B. Contreras, Presiding Judge.

[2] Original record, page 1.

[3] Original record, page 19.

[4] Original record, page 29.

[5] TSN, September 6, 2004, pp. 3-6.

[6] TSN, October 25, 2004, pp. 4-6.

[7] TSN, June 18, 2008, pp. 4-5.

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[8] TSN, June 23, 2009, pp. 4-7.

[9] TSN, August 12, 2009, pp. 2-4.

[10] TSN, October28, 2009, page 4.

[11] TSN, October28, 2009, pp. 6-12.

[12] Original record, page 351.

[13] Original record, page 352.

[14] Rollo, page 2.

[15] Rollo, page 5.

[16] Rollo, pp. 17-30.

[17] Rollo, pp. 41-60.

[18] Rollo, page 62.

[19] People v. Roble, G.R. No. 192188, 11 April 2011, 647 SCRA 593.

[20] Ibid.

[21] People v. Alcuizar, G.R. No. 189980, 6 April 2011, 647 SCRA 431.

[22] Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

[23] G.R. No. 172953, 30 April 2008, 553 SCRA 619.

[24] See Formal Offer of Exhibits (For the Prosecution), original records, pp. 267-268.

[25] TSN, June 18, 2008, pp. 5-8.

[26] TSN, October 25, 2004, pp. 5-8.

[27] G.R. No. 172953, 30 April 2008, 553 SCRA 619.

[28] See Commitment Order, original record, page 10.

[29] See Order dated May 19, 2009, original record, page 277.

[30] Effective December 1, 2000, A.M. No. 00-5-03-SC.

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