

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOAN ABDUL Y SANI @ “JOE” @ “JAMILAH ABDULLA Y SARIP”, ACCUSED-APPELLANT.

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

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

On appeal is the July 26, 2012 Decision (Records, pp. 214-223) of the Regional Trial Court of Muntinlupa City, Branch 204 convicting herein accused-appellant Joan Abdul y Sani aka Jamilah Abdulla y Sarip for Violation of Section 5 and 11, Article II of Republic Act No. 9165, otherwise known as the “Comprehensive Drugs Act of 2002”.

The facts:

In two Informations both dated July 14, 2008, accused-appellant Joan Abdul was charged with the crime of violating Sections 5 and 11, Article II of Republic Act No. 9165 otherwise known as “The Comprehensive Dangerous Drugs Act of 2002”. The accusatory portions of which reads:

CRIMINAL CASE NO. 08-473

“On or about the 11th day of July 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully and unlawfully sell, trade and dispense a dangerous drug, as she did then and there sell to SPO3 Pablo A. Agawin, Jr. for Two Thousand Pesos (P2,000.00) EPHEDRINE, a dangerous drug, with a total weight of 0.68 gram contained in transparent plastic sachet, without proper authorization or license therefor.

Contrary to law.” (Records, p.1)

CRIMINAL CASE NO. 08-474

“On or about the 11th day of July 2008, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is not authorized by law to possess any dangerous drug, did then and there, willfully and unlawfully possess EPHEDRINE, a dangerous drug, with a total weight of 2.71 grams contained in four transparent plastic sachets (two of those sachets have 0.68 gram of Ephedrine each, whereas, the other two contain 0.63 gram and 0.72 gram of Ephedrine) that she did then and there place in the front pocket of her pants while seated in a motor vehicle then parked in front of Chowking Alabang.

Contrary to law.” (Records, p. 3)

During arraignment on September 25, 2008, accused-appellant pleaded NOT GUILTY. (Records, p.35)

Trial on the merits ensued with the Prosecution presenting SPO3 Pablo Agawin and PO2 Renato Ibañez as witnesses while the Defense presented accused-appellant herself.

The prosecution tends to establish that an information was received from a confidential informant that a certain

Marlon was engaged in selling of shabu hence, a surveillance was made by the District Anti-Illegal Drugs Special Operation Task Force (DAID-SOTF). As a result, Police Senior Inspector Rodolfo Placido (PS/Insp. Placido) formed a team who will conduct a buy-bust operation together with the confidential informant so as to have the suspected drug pusher arrested. A Pre-Operation Report and Coordination Form were prepared and submitted to the Philippine Drug Enforcement Agency (PDEA), who in turn sent back a Coordination Form with control number to DAID-SOTF.

On July 11, 2008 around 3:00 o' clock in the afternoon PS/Insp. Placido conducted a briefing and designated SPO3 Pablo Agawin (SPO3 Agawin) as poseur-buyer in the buy-bust operation against said drug pusher. SPO3 Agawin was handed four (4) five hundred peso bills marked money and marked them with "AS" representing the initials of their commanding officer, Adolfo Samala. The marked money were photocopied as well.

It was agreed during the briefing that PO2 Renato Ibañez (PO2 Ibañez) will serve as SPO3 Agawin's immediate back up and the pre-arranged signal will be the switching of the hazard light of the vehicle they are going to use. Should the transaction take place outside the vehicle, the pre-arranged signal was the removal of SPO3 Darwin Bolser's headgear.

The team was dispatched between 6:30 – 7:30 in the evening on board three vehicles heading Muntinlupa with the confidential informant riding the vehicle driven by SPO3 Agawin. On their way, Marlon sent a text message to the confidential informant that he could no longer meet them. In lieu of his absence, his trusted partner, herein accused-appellant will meet them instead at Chowking Restaurant located beside Liana's Supermarket in Alabang, Muntinlupa City.

Upon reaching their destination, the confidential informant identified accused-appellant as the one with whom they will transact with. The rest of the buy-bust team parked near Chowking. They met with accused-appellant as soon as they alighted the vehicle. The confidential informant introduced SPO3 Agawin as a talent scout who needs to buy shabu for his talents. Accused-appellant asked if they were the ones that Marlon talked to. When they agreed, accused-appellant informed them that she was hesitant to proceed with their transaction in the said area as there were quite a number of people in the vicinity so they went inside the vehicle of SPO3 Agawin.

Inside the vehicle, SPO3 Agawin handed the 4 marked five hundred peso bills and accused-appellant then handed a plastic sachet containing the alleged illegal drug. SPO3 Agawin saw several more sachets which came from her pocket so he asked accused-appellant if she had more, however, she replied that the other sachets were considered sold as they were pre-ordered.

Upon completion of the transaction, SPO3 Agawin then turned on the signal light as agreed so the buy-bust team headed to their vehicle. SPO3 Agawin then arrested accused-appellant and informed her of her constitutional rights. PO2 Ibañez frisked accused-appellant to search for the other sachets that were previously seen in her possession. SPO3 Agawin asked accused-appellant to empty her pockets so the other sachets and marked money were retrieved from her. The seized items were marked and inventoried by SPO3 Agawin. The Certificate of Inventory was prepared and signed by SPO3 Agawin and PO2 Ibañez in the presence of accused-appellant. At that time however, there was no media representative and the barangay tanod who was present during the arrest did not sign the Certificate of Inventory.

The buy-bust team together with accused-appellant headed to the police station where the seized items were turned over for documentation purposes. The following documents were prepared as well: Drug Test Request, Request for Examination of Specimen, Spot Report, Affidavit of Arrest and Inventory of Evidence. All the pieces of evidence were photographed. SPO3 Agawin delivered the retrieved sachets to the crime laboratory for examination which yielded positive for Ephedrine, a dangerous drug as stated by PS/Insp. Abraham Tecson,

Forensic Chemist of the PNP Crime Laboratory Makati City.

Accused-appellant meanwhile avers that there was no valid buy-bust operation that took place on July 11, 2008. On said date, accused-appellant declared that she even withdrew money from the Automated Teller Machine (ATM) to pay her creditors. She asserts her version that on July 14, 2008 around 4:30 o'clock in the afternoon while she was eating with her sister, five (5) men entered their house looking for a certain Marlon. When accused-appellant failed to identify the whereabouts of Marlon, the four (4) men searched the second floor for thirty (30) minutes while the other one was left to guard them. Not finding Marlon, the policemen invited her to the police station for interrogation. Accused-appellant resisted thus, she was handcuffed and dragged to a trolley then brought to Fort Bonifacio.

The police men threatened to charge accused-appellant with drug pushing if she will not get in touch with her relatives to settle the case. For her failure to get in touch with anybody, she was then detained. She revealed that the police officers fabricated a criminal charge against her because she failed to identify the whereabouts of Marlon.

On July 26, 2012 the RTC rendered its decision which reads:

“WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of Violations of Secs. 5 and 11 of Republic Act No. 9165, JOAN ABDUL y SANI aka JAMILAH ABDULLA y SARIP, in Crim. Case No. 08-473 is sentenced to Life Imprisonment and to pay a fine of Php 500,000.00; and in Criminal Case No. 08-474, JOAN ABDUL y SANI aka JAMILAH ABDULLA y SARIP is sentenced to an Indeterminate penalty of TWELVE (12) YEARS and ONE (1) day as minimum to FOURTEEN (14) YEARS as maximum and to pay a FINE of Php 300,000.00.

The subject drug evidence consisting of five (5) packets of “EPHEDRINE” are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The preventive imprisonment undergone by the accused shall be credited in her favor.

SO ORDERED.”

Dissatisfied with the RTC decision, she filed this appeal before this Court with the following errors:

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 5 AND 11, ARTICLE II, OF REPUBLIC ACT NO.9165.

II.

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION'S WITNESSES ON THE ALLEGED BUY-BUST OPERATIONS.

III.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PRESENT THE CONFIDENTIAL INFORMANT.

The appeal is meritorious.

Accused-appellant contends that the RTC erred in convicting her based solely on the testimonies of the police officers. She argued that the confidential informant should have been presented in court. In her Brief, accused-appellant also claimed that no photograph and inventory of the seized item were taken in the presence of

the witnesses enumerated by R.A. 9165. Thus, the guilt of the accused was not proven beyond reasonable doubt.

On the contrary, the plaintiff-appellee insists on the presumption that official duty had been regularly performed and that the prosecution was able to establish all the elements of illegal sale of drugs.

Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal. (People v. Pedronan, 452 Phil. 226, 233 [2003]);

We begin with the precept that in criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. (People v. Obmiranis, 574 SCRA 140 [2008]) Of prime importance therefore in these cases is that the identity of the dangerous drug likewise be established beyond reasonable doubt. (People v. Obmiranis, 574 SCRA 140 [2008]) In other words, it must be established that the dangerous drug presented in court as evidence against the accused is the same as that seized from her in the first place. 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. (Mallillin v. People, 553 SCRA 619, 632 [2008]) It would include the testimony about every link in the chain, from the moment the item was picked up, 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. (Mallillin v. People, 553 SCRA 619, 633 [2008]) Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused. (People v. Obmiranis, 574 SCRA 140 [2008])

Section 1 (b) of the 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 pursuant to Section 21, Article II of the IRR of R.A. 9165 in relation to Section 81 (b) Article IX of R.A. 9165) which implements R.A. No. 9165 defines "chain of custody" as follows:

“b. '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 this case, while SPO3 Agawin admitted that his team arrested the accused-appellant, records are bereft of proof on how the seized items were handled from the time of arrest until they brought the accused and the evidence to the office for investigation and disposition. SPO3 Agawin just claimed that after the arrest, he marked and inventoried the plastic sachets and proceeded to their office together with the accused-appellant. Thereafter, he turned it over to the investigator for documentation. Although, there was a request for a laboratory examination, SPO3 Agawin did not relate the name of the investigator or to whom the custody of the drugs were turned over.

Furthermore, the evidence of the prosecution did not reveal the identity of the person who had the custody and safekeeping of the drugs after its examination and pending presentation in court. The failure of the prosecution to establish the chain of custody is fatal to its cause.

Furthermore, the required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 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.”

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which reads:

“(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, 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.”

The records of the present case are bereft of evidence showing that the apprehending team followed the outlined procedure despite its mandatory terms, as indicated by the use of "shall" in its directives. No inventory and photograph were made in the presence of a representative from the media, 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. Furthermore, the alleged inventory was not signed by the accused. The deficiency is patent from the following exchanges at the trial:

CROSS EXAMINATION OF PO2 RENATO IBAÑEZ

“Q: You conducted the inventory where?

A: At the premises, sir.

Q: Not in your office?

A: Yes, sir.

Q: You are not sure?

A: I cannot remember, sir.

Q: So, you are not sure?

Q: At the time you have no elected barangay official or media with you for purposes of witnessing the buy-bust operation?

A: That time none, sir.

Q: And you could have inventoried and secured elected official in Barangay Hall of Alabang for that purpose but you did not do so?

A: None anymore, sir.

ATTY. FELICEN: That's all, your honor.

THE COURT: Redirect?

FISCAL BAYBAY: No redirect, your honor.”

(TSN, pp. 9-10, March 10, 2011)

In the case at bar, it is indisputable that the procedures for the custody and disposition of confiscated dangerous drugs in Section 21 of R.A. No. 9165 were not complied with. There was no representative from the media and the Department of Justice, or any elected public official who participated in the operation and who were supposed to sign an inventory of seized items and be given copies thereof. None of the statutory safeguards were observed.

The alibi of the arresting team that there was no media representative, prosecutor or elected official at that time is unacceptable. As officers of the law, especially members of the Station Anti-Illegal Drugs Unit, knowing that they would conduct a buy-bust operation, they are presumed to be aware of their duties and responsibilities in the apprehension of drug users and pushers, in securing the pieces of evidence related to their arrest, and in protecting the chain of custody.

In addition, there was discrepancy regarding the subject of the sale. A perusal of the records stated that the buy bust team bought shabu from accused-appellant, however, the crime laboratory report stated that based on the qualitative examination conducted by the Southern Police District Crime Laboratory on the specimen given by SPO3 Agawin showed a positive result for ephedrine and not shabu. If the subject of the sale was shabu why did the result of the examination reveal a different drug?

Indeed, 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 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. (People v. Dela Cruz, 568 SCRA 273 [2008]) Thus, the corpus delicti should be identified with unwavering exactitude. (People vs. Robles, 586 SCRA 647 [2009])

The prosecution's failure to show that the arresting officer followed the required procedure in the conduct of the buy-bust operation, as well as the proper procedure in the chain of custody and control of the seized specimens, constitutes a deviation that destroys the presumption of regularity in the performance of duty. Thus, the presumption of regularity in the performance of duty cannot overcome the constitutional presumption of innocence. In the case of *People vs. Sanchez* (569 SCRA 194 [2008]) citing *People vs Cañete* (384 SCRA 411 [2002]), the High Court ruled:

“While the Court is mindful that 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 in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because First, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, . . . [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. The presumption also cannot prevail over positive averments concerning violations of the constitutional rights of the accused. In short, the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.”

WHEREFORE, in view of the foregoing, the appeal is GRANTED. The decision of the Regional Trial Court of Muntinlupa City, Branch 204 convicting herein accused-appellant Joan Abdul y Sani aka Jamilah Abdulla y Sarip for Violation of Section 5 and 11, Article II of Republic Act No. 9165 is hereby REVERSED and SET ASIDE. The accused Joan Abdul y Sani aka Jamilah Abdulla y Sarip is hereby ACQUITTED and ordered RELEASED from detention unless being held for some other lawful cause.

SO ORDERED.

Lopez, M.V., and Inting, S.B., JJ., concur.

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