PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALLAN NAZARENO Y CABURATAN, APPELLANT.

G.R. No. 174771. September 11, 2007

Ponente: TINGA, J.

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TINGA, J.:

The overriding consideration in criminal cases is not whether appellant is completely innocent, but rather whether the quantum of evidence necessary to prove his guilt was sufficiently met. The constitutional right to be presumed innocent until proven guilty can be overcome only by proof beyond reasonable doubt. In fact, unless the prosecution discharges this burden, the accused need not even offer evidence in his behalf.[1]

With this view, we resolve the instant appeal from the Decision[2] dated 30 June 2006 of the Court of Appeals (CA) in CA- G.R. CR-H.C. No. 00025 affirming the Decision[3] dated 20 September 2004 of the Regional Trial Court of Iligan City, Branch 6 in Criminal Case No. 06-10397 where appellant Allan Nazareno was found guilty of sale of shabu in violation of Section 5, Article II of Republic Act No. 9165.[4]

The Information[5] dated 16 September 2003 against appellant reads:

> That on or about September 15, 2003, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously sell and deliver two (2) sachets containing methamphetamine hydrocloride [sic] a dangerous drug, commonly known as shabu, weighing more or less 0.2 gram.
>
> Contrary to and in violation of Sec. 5, Article II of Republic Act No. 9165.[6]

Appellant pleaded not guilty on arraignment.[7] Forthwith, trial on the merits ensued. The prosecution presented as witnesses PO2 Dino Magno, PO3 Rene Enterina and P/S Inspector Aileen Bernido to prove its factual version of the case as follows.

Following a pre-operation briefing on 15 September 2003, a team composed of SPO2 Vivencio Lluisma, PO2 Rey Taboclaon, PO2 Magno and PO3 Enterina, all members of the Anti-Illegal Drug-Special Operation Task Team of the Philippine National Police (PNP)-Police Community Precinct No. 3 in Tangibo, Daligupa, Iligan City, conducted a buy-bust operation involving appellant as the suspected drug-pusher.[8] At around two o'clock in the afternoon, the team proceeded to appellant's beauty parlor in Purok 4, Barangay Kiwalan. The appointed poseur-buyer PO2 Magno, together with the informant, entered the parlor while the back-up team positioned itself at a corner store nearby. PO2 Magno purchased two (2) sachets of shabu for P200.00 from appellant. After PO2 Magno gave the pre-arranged signal, the rest of the team rushed to the scene and placed appellant under arrest. PO2 Magno immediately gave the two sachets to SPO2 Lluisma.[9] PO3 Enterina frisked appellant and recovered from him the two (2) P100.00 bills that were previously photocopied.[10] Thereafter, appellant was brought to the police station for further investigation.

On 15 September 2003, P/S Insp. Bernido, a PNP Forensic Chemist assigned to the Misamis Occidental Crime

Laboratory, received a request from the PNP Crime Laboratory of Lanao del Norte, Iligan City to examine two sachets marked "A-01" and "A-02" containing white crystalline substance.[11] Their contents tested positive for the presence of methamphetamine hydrochloride or shabu.[12]

The defense propounded a different version and presented as witnesses appellant himself and Lolita Pasco.

Appellant testified that on 15 September 2003 at around 12:20 p.m., he was taking a nap inside his beauty parlor while waiting for customers. He was later roused from sleep by SPO2 Lluisma and two other persons whom he later came to know as PO2 Magno and PO3 Enterina. SPO2 Lluisma told him to go with them to the police station as there was a complaint filed against him. He agreed.[13]

At this point, Lolita Pasco was sweeping the floor of her carinderia when she noticed a commotion in the direction of appellant's beauty parlor. She could not see what was happening inside the parlor

but saw a police service vehicle parked in front of it.[14] She saw appellant being pulled by a police officer and was made to board the partrol car.[15]

At the police station, appellant was shown a white envelope containing two sachets of what appeared to be shabu. SPO2 Lluisma told him to get a good lawyer because those were the evidence recovered from him.[16] An argument ensued between appellant and SPO2 Lluisma. Despite his disavowals, appellant's fingerprints were taken and he was made to sign a document. The following day, he was brought to the Office of the City Prosecutor and then to the City Jail.

After trial, the trial court adjudged appellant guilty as charged, the dispositive portion of its Decision reads:

> WHEREFORE, the court finds the accused Allan Nazareno y Caburtan GUILTY beyond reasonable doubt of the offense of violation of Article II, Sec. 5 of R.A. No. 9165 and hereby imposes upon him the penalty of LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND (P500,000.00) PESOS without subsidiary imprisonment in case of insolvency.
>
> The two (2) sachets of shabu are ordered confiscated to be disposed pursuant to Sec. 21, Art. II of R.A. No. 9165.
>
> The accused has been under preventive detention since September 16, 2003 until the present. The period of such preventive imprisonment shall be credited in favor of the accused in the service of his sentence.
>
> SO ORDERED.[17]

Appellant thereafter elevated the case to the CA arguing that the trial court erred: (1) in finding that his guilt for the crime charged has been proven beyond reasonable doubt; and (2) in giving weight and credence to the testimonies of the prosecution witnesses.[18]

The appellate court affirmed the decision of the trial court, disposing as follows:

> WHEREFORE, premises foregoing, the instant appeal is hereby DISMISSED and the appealed decision is hereby AFFIRMED in toto.
>
> SO ORDERED.[19]

The appellate court held that the elements for the indictment in the sale of prohibited drugs were clearly established by the prosecution: the identity of appellant as the seller was established by the positive testimonies of PO2 Magno and PO3 Enterina; the transaction took place after appellant was paid two P100.00 bills by PO2 Magno for two (2) sachets of shabu; the marked money was recovered from appellant after a body search was conducted on his person; and the laboratory test confirmed that the contents of the two sachets were positive for

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the presence of methamphetamine hydrochloride or shabu. It noted that appellant's defense of frame-up is uncorroborated and cannot overturn the presumption of regularity in the performance of official duties in favor of the police officers.

The case is now before us for our final disposition. In a Resolution[20] dated 15 January 2007, this Court required the parties to submit their respective Supplemental Briefs if they so desire. Both the Office of the Solicitor General and the appellant opted not to file one considering that they have exhaustively argued all the relevant issues in their respective briefs filed with the appellate court.[21]

In his brief,[22] appellant reiterates his contention that the prosecution was not able to establish with moral certainty the actual sale of shabu as a fact. He claims that if it were true that he was a drug- pusher, it would be highly improbable that he would readily sell shabu to unfamiliar persons in broad daylight and inside his very own place of business. He likewise maintains that the two (2) sachets of shabu were not sufficiently linked to him as it was not proven that the sachets turned over to the crime laboratory and examined by P/S Insp. Bernido were the same sachets allegedly recovered from him.

The appeal is meritorious.

In the prosecution for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the corpus delicti or the illicit drug was presented as evidence; and 3) the buyer and seller were identified.[23] In People v. Orteza,[24] we reiterated thus:

> x x x What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.[25]

We hold that the prosecution failed to establish with moral certainty all the elements necessary for the conviction of appellant.

Although the two police officers identified appellant as the seller in the buy- bust operation, the prosecution failed to prove the existence of the corpus delicti.

The records are bereft of proof that the police officers complied with the proper procedure in the custody of seized drugs as specified in People v. Lim.[26] In that case, we held:

> x x x any apprehending team having initial and control of said drugs and/or paraphernalia, should immediately after seizure and confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with such a requirement raises a doubt whether what was submitted for laboratory examination and presented in court was actually recovered from the appellants. It negates the presumption that official duties have been regularly performed by the PAOC-TF agents.[27]

In the instant case, PO2 Magno immediately turned over to SPO2 Lluisma the two sachets he allegedly bought from appellant without even marking them. He testified, thus:

x x x x

Q: Now, after you received the two sachets of shabu, where did you put it?

A: I was holding it, sir.

Q: Now, after you received the two sachets and after you have given the two pieces 100.00 peso bills to Allan Nazareno, what did you do next?

A: We asked permission from him that we will leave.

Q: And after that, what happened?

A: We went out of the parlor?

Q: And when you were already outside of the parlor, what did you do?

A: Then I gave signal to my companions outside.

Q: What signal did you give to your companions?

A: Okay sign of my thumb, sir.

Q: What was the purpose of that signal?

A: That I have already got [sic].

Q: And what did your companions do after you gave the okay signal?

A:

Then they immediately went inside the parlor and they arrested Allan.

Q: Now, since your companions were already around after you have given the signal[,] what did you do with the two sachets of shabu which you had in your possession?

A: I gave the two sachets to our Action Officer SPO2 Lluisma.

x x x x

PROSECUTOR ALBULARIO, JR.

Q: Then after that what happe[n]ed next?

A: PO3 Enterina had bodily searched Allan and he recovered the marked money.

Q: After this operation, after PO3 Enterina was able to retrieve the money from the accused, where else did you go?

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A: I waited outside of the parlor.

x x x x[28]

Q: You mentioned that you turned over the two sachets of shabu to your Action Officer, PNCO in the person of SPO2 Lluisma?

A: Yes, sir.

Q: Do you know what happened to that two sachets of shabu?

PROSECUTOR ALBULARIO, JR:

He already testified your Honor, that he does not know?

COURT:

If he knows.

A: What I know is that they have it examined at the Crime Laboratory, sir.

ATTY. CELSO SARSABA:

Q: Do you have an evidence custodian in your office[,] Mr. Witness?

A: Yes, sir.

Q: Do you have any knowledge whether these two sachets of shabu were turned over to your evidence custodian?

A: I do not know about that[,] sir.

Q: You also do not have any knowledge whether there was an inventory on the articles taken from the accused?

A: I do not know about that[,] sir.

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Q: But you were there all the time at the police station when this accused was brought?

A: Yes, sir.

x x x x

COURT:

Q: During your trainig [sic], you were not trained to mark evidence upon recovery?

A: There was[,] your Honor.

Q: Then did you place a mark on the two sachets before you give [sic] it to Lluisma so that you can identify it if it will be shown to you again?

A: I was not able to mark your Honor.

x x x x[29] (Emphasis supplied)

Significantly, P/S Insp. Bernido testified that when she received the two sachets, they were already marked as "A-01" and "A-02" and were placed inside a transparent plastic bag on which the name of appellant was written.[30] However, she has no knowledge as to who actually marked the articles. She testified thus:

Q: At the time you received this sample[,] you only noticed that there are two markings at the plastic containing the two sachets with a marking A-01 and A-02?

A: Yes[,] sir.

Q: And you have not found any other markings other than that?

A: When I received [sic] I noticed that there are black inks written in the name of the suspect.

Q: Written in the printed name of the suspect?

A: Yes[,] sir.

Q: You did not find any signature as to who actually marked this sample of shabu?

A: Yes[,] sir.

Q: And you don't have any knowledge as to the indication as to where this [sic] plastic sachets containing shabu

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were being marked?

A: Yes[,] sir.

x x x x[31]

The prosecution did not present SP02 Lluisma to fill the gaps in its narration. He is in the best position to testify on what actually transpired after PO2 Magno turned over to him the illegal drugs. Although he was subpoenaed several times, the prosecution failed to present him as a witness or to explain his non-appearance. Neither did it present any other witness competent to testify that it was SP02 Lluisma who in fact made the markings on the seized articles.

In People v. Laxa,[32] the buy-bust operatives failed to mark the confiscated marijuana immediately after the apprehension of the accused. This Court held therein that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the illegal drug. Hence, it was concluded that the prosecution failed to establish the identity of the corpus delicti.

Similarly in Zarraga v. People,[33] we held that the material inconsistencies as regards when and where the markings on the shabu were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the corpus delicti. Hence, the accused was acquitted.

On this score, it is no longer necessary to discuss at length the other matters raised by appellant. Since the prosecution failed to prove beyond reasonable doubt all the elements of the crime charged, we are constrained to absolve appellant of the charges against him pursuant to his constitutional right to be presumed innocent.

WHEREFORE, premises considered, the Decision dated 20 September 2004 of the Regional Trial Court of Iligan City, Branch 6 in Criminal Case No. 06-10397 is REVERSED and SET ASIDE. Appellant ALLAN NAZARENO y CABURATAN is ACQUITTED of the crime

charged on the ground of reasonable doubt and ordered immediately RELEASED from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is ORDERED to implement this Decision forthwith and to INFORM this Court, within five (5) days from receipt hereof, of the date appellant was actually released from confinement. Costs de oficio.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr. JJ., concur.

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[1] People v. Satorre, 456 Phil. 98 (2003).

[2] Rollo, pp. 3-19; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr.

[3]CA rollo, pp. 24-33; penned by Judge Valerio M. Salazar, Regional Trial Court, Branch 6, Iligan City.

[4] Otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

[5] CA rollo, p. 22.

[6] Id.

[7] Records, p. 17.

[8] Id. at 59; TSN, 19 February 2004, p. 4.

[9] TSN, 19 February 2004, p. 8.

[10] TSN, 24 February 2004, pp. 4-5.

[11] Records, p. 62.

[12] Id. at 63.

[13] TSN, 25 May 2004, pp. 6-10.

[14] TSN, 17 June 2004, pp. 9-10.

[15] Id. at 10-11.

[16] TSN, 25 May 2004, p. 13.

[17] CA rollo, p. 33.

[18] Id. at 56.

[19] Rollo, p. 18.

[20] Id. at 19.

[21] Id. at 20-21.

[22] CA rollo, pp. 54-64.

[23] People v. Orteza, G.R. No. 173051, July 2007 citing People v. Bandang, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 579.

[24] Supra.

[25] Id.

[26] 435 Phil. 640, 659 (2002), citing the Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Resolution No. 2, S. 1990.

[27] Id. at 659-660.

[28] TSN, 19 February 2004, pp. 8-9.

[29] Id. at 15-17.

[30] TSN, 23 March 2004, pp. 6, 11, 14.

[31] Id. at 14.

[32] 414 Phil. 156 (2001).

[33] G.R. No. 162064, 14 March 2006, 484 SCRA 639.

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