

GUIDO CATUIRAN Y NECUDEMUS PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 175647. May 08, 2009

Ponente: TINGA, J.

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TINGA, J.:

In this petition for review,[1] Guido Catuiran y Necudemus assails the Decision[2] of the Court of Appeals[3] in CA-G.R. No. 27702 dated 28 June 2006, as well as its Resolution[4] dated 14 November 2006 which denied reconsideration. The assailed decision affirmed the judgment of conviction[5] rendered by the Regional Trial Court of Kalibo, Aklan, Branch 5 in Criminal Case No. 5834, one for violation of Section 16, Article III of Republic Act No. 6425, as amended.

Petitioner Guido Catuiran y Necudemus and his brother, Robert Catuiran (Robert), were apprehended in an entrapment operation conducted by the elements of the Batan, Aklan police force on 23 November 2000 following a "test-buy" operation conducted by a police informant two days before. The two were allegedly caught in the act selling methamphetamine hydrochloride, a dangerous drug locally known as shabu. They were charged in a criminal information as follows:

That on or about the 23[rd] day of November 2000, in the afternoon, in Barangay Lupit, Municipality of Batan, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, and acting as pushers [or] brokers in the business of selling, delivering, giving away to another and/or distributing regulated drugs, did then and there willfully, unlawfully and feloniously have in their possession and control two (2) plastic sachets of Methamphetamine Hydrochloride (Shabu) weighing 9.5 grams, more or less, which were confiscated from the said accused by members of the Philippine National Police of Batan Police Station, Batan, Aklan, along with cash money amounting to ONE THOUSAND FOUR HUNDRED PESOS AND FIFTY CENTAVOS (P1,004.50).

CONTRARY TO LAW. [6]

On arraignment, petitioner and Robert entered a negative plea.[7]

At the ensuing trial, the prosecution presented SPO3 Jose Patron (Patron), PO1 Ariel Damasco (Damasco), P/Sr. Insp. Angela Baldevieso (Baldevieso) and P/Insp. Agustina Ompoy (Ompoy) as witnesses. Patron and Damasco were members of the buy-bust team, whereas Baldevieso and Ompoy were forensic chemists at the Camp Delgado Crime Laboratory where the alleged specimens of drugs seized from the two accused (petitioner and Robert) were brought for chemical analysis.

It was established from the prosecution evidence that petitioner and Robert had been known to the Batan authorities for already a month as they had been placed under police surveillance based on the information given by an anonymous informant that they were in the business of selling dangerous drugs. Two days before their arrest, the police asset allegedly was able to buy shabu from the two accused.[8] Thus, at around 4:00 in the

afternoon of 23 November 2000, the members of the buy-bust team prepared for the operation. At the appointed place and time, the poseur-buyer met with petitioner who arrived in a motorcycle driven by Robert. The members of the apprehending team were hidden behind a row of plants so they were not visible to the two. The transaction, however, did not transpire as the two accused were in a hurry. Petitioner allegedly was heard saying, "Abo riya and stock, mabalik ugaling kami kung hi re-pack ean,"—implying that they would be back after they have repacked some more of the merchandise—and was seen showing to the poseur-buyer two big sachets of shabu. At that instant, Robert uttered, "Mosyon! (Let's go!)" , and then sped away.[9]

The police then chased the two accused and caught up with them somewhere in Barangay Lupit. The buy-bust team instantaneously introduced themselves as policemen and ordered the two accused to stop. Then, Patron allegedly noticed petitioner taking something out of his left pocket, which he threw away. They then confiscated one sachet of shabu from petitioner. The wife of a kagawad, who was standing by at the time, allegedly saw petitioner throwing the other sachet away and saw where it landed so she collected it and handed it over to Patron while the accused were being frisked. Aside from the plastic sachets, the team was also able to recover cash from petitioner in the amount of P1,004.50. The two accused were brought directly to the police station.[10]

Patron, the leader of the buy-bust team,[11] testified and admitted in court the identity of the drugs recovered from petitioner but that he could not determine which one of the two sachets was recovered directly from petitioner and which one was picked up and surrendered to him by the wife of the kagawad. Neither could he recall who actually delivered the specimens to the laboratory and who placed the initial markings thereon as he allegedly surrendered the sachets to the officer-in-charge, Patrocinio Bolivar, who then turned them over to the custodian.[12]

Damasco, supply and finance officer of the Batan police, testified that he marked the plastic sachets each with the initials "A" and "B" at the police station and then brought them to the Camp Delgado Crime Laboratory in Iloilo City on 28 November 2000 for laboratory examination. He professed that he was the one, without company, who had brought the seized sachets of alleged shabu to the crime laboratory[13] but did not inform the two accused or the latter's representative of such fact.[14]

Ompoy, the forensic chemist at the crime laboratory testified that she was the one who administered the examination on the specimen. In open court, she was able to observe the uniqueness of the specimens and admitted as her own the markings she had placed on them.[15] She narrated that after conducting the necessary 3-stage test on the specimens submitted, they had tested positive for methamphetamine hydrochloride content. On cross-examination, she admitted that the specimens were received by a certain SPO1 Alberto Espura (Espura) but that immediately she conducted the tests on them. [16] Baldevieso, for her part, affirmed that it was indeed Ompoy who administered the tests on the specimens, but stated that it was Bolivar who delivered the specimens to the laboratory for testing.[17]

The prosecution then submitted to the court the chemistry report[18] bearing the signature of Ompoy and of C/Insp. Rea Abastillas Villavicencio. The report indicates that the two specimens of alleged shabu had been tested positive for methamphetamine hydrochloride content.

For his defense, petitioner narrated that he and Robert were on board a motorcycle on their way home that day when suddenly, a certain Steve David summoned him and asked him whether he had a buyer for wood products. Saying that he had none, he and Robert proceeded on their way.[19] This incident was affirmed by Steve David.[20] On their approach to the area of Barangay Lupit, Patron and a certain Patrocinio Bolivar, known to him as members of the Batan police, who were also on motorcycle, overtook them from behind and blocked their way. And as soon as they had been stopped, the two police officers allegedly told them to alight and lie face down

on the ground, fired a gun and started frisking their pockets. They were then handcuffed and were told to go with the officers to the poblacion. Patron allegedly was able to recover from him his cash money.[21] This incident was likewise established by the testimony of Arnaldo Reyes.[22]

At the station, Patron, in the course of the interrogation, allegedly insinuated that the two plastic sachets on the table belonged to petitioner. Petitioner denied ownership thereof and reasoned that the police had not in fact recovered anything from him when he was frisked. He also denied having been in the business of selling drugs.[23] Robert corroborated petitioner's testimony in its material respects.[24]

In its Decision dated 3 July 2003, the trial court found petitioner guilty beyond reasonable doubt of the offense charged but acquitted Robert for insufficiency of evidence.[25]

On appeal, the Court of Appeals affirmed the decision of the trial court.[26] Petitioner's motion for reconsideration was denied.[27] Hence, this recourse to the Court.

In this petition for review, petitioner, on the one hand, boldly reiterates that he had merely been framed up by the members of the Batan police as indeed no buy-bust operation was conducted by the officers, said officers had not seen petitioner in possession of the alleged drugs that would otherwise justify the chase that ensued and which culminated in a warrantless search and arrest, and not a single sachet of shabu had been confiscated from him. He also faults both the trial court and the Court of Appeals in placing too much credibility on the prosecution witnesses.[28]

On the other hand, the Office of the Solicitor General counters that the credibility of the prosecution witnesses prevails over the uncorroborated defenses of denial and frame-up advanced by petitioner inasmuch as the police officers in this case are presumed to have regularly performed their duty and because the same had not been refuted by clear and convincing evidence. It likewise noted that what was important is that the prosecution was able to establish that the buy-bust team actually recovered the two sachets of shabu from petitioner. Thus, it concludes, there was sufficient basis—aside from the presumption that the officers had regularly performed their duty—for a finding of guilt beyond reasonable doubt.[29]

The Court has to grant the petition.

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.[30]

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.[31] Of prime importance therefore in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt.[32] In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him 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.[33]

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.[34] 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.[35] 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.[36]

On this score, what, in this case, appears to weigh heavily on the prosecution's cause is the confusion that marks the testimony of Damasco and Baldevieso as to who delivered the specimens to the laboratory. It must be recalled that Damasco claimed that it was he himself who delivered the specimens, but Baldevieso recounted that it was Bolivar who did so. This inconsistency, minor as it may seem, is in fact crucial to a reliable chain of custody of the drug specimens. For, if indeed it was Bolivar who had undertaken to submit the sachets to the laboratory, then the evidence chain would be incomplete in view of the fact that he had not been given an opportunity to appear in court to at least observe the uniqueness of the exhibits and testify as to the condition thereof in the interim that the evidence was in his possession and control.

For this same reason, it must also be taken note of that the prosecution had likewise failed to offer the testimony of the unnamed evidence custodian mentioned by Damasco and Patron in their testimony. The same is true with respect to Espura who, according to Ompoy, was the one who received the specimens at the crime laboratory and who could have somehow shed light on the identity of the person which submitted the same for examination.

While indeed a perfect chain of custody does not always have to be 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.[37] The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange.[38] 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.

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. And the risk of tampering, loss or mistake with respect to an exhibit of this nature 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.[39] As a reasonable measure, in authenticating narcotic specimens, 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, we cannot simply close our eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over narcotic substances 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.

Inevitably, the conclusion is that the prosecution in this case failed to comply with that standard. For that reason, no reasonable assurance could be had that the specimens of shabu submitted in court as evidence against petitioner were the same ones seized from him in the first place, delivered to the police station and later on submitted to the laboratory for chemical analysis—especially considering that petitioner, since the inception of the case, has been adamant in asserting that the supposed sachets of shabu were merely planted evidence and that no such items had been recovered from him when he and his brother were arrested.

All told, the attendant loopholes in the evidence adduced against petitioner in this case resonate the fact that the prosecution was unable to establish the identity of the dangerous drugs and in effect failed to obliterate the hypothesis of appellant's guiltlessness. And even if we blindly rely on the credibility of the prosecution witnesses in this case, the evidence would still fall short of satisfying the quantum of evidence required to arrive at a finding of guilt beyond reasonable doubt since the evidence chain failed to solidly connect petitioner with the evidence in a way that would establish that the specimens are one and the same as that seized in the first place and offered in court as evidence.

In *Mallillin v. People*,^[40] *People v. Obmiranis*^[41] and *People v. Garcia*^[42] and *Carino v. People*^[43] we declared that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of shabu, and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflict with every proposition relative to the culpability of the accused. It is this same reason that now moves us to reverse the judgment of conviction in the present case.

WHEREFORE, the assailed Decision of the Court of Appeals CA-G.R. CR No. 27702 dated 28 June 2006 affirming the judgment of conviction of the Regional Trial Court of Kalibo, Aklan, Branch 5 in Criminal Case No. 5834, as well as its Resolution dated 14 November 2006 which denied reconsideration, are REVERSED and SET ASIDE. Petitioner Guido Catuiran y Necudemus is ACQUITTED on reasonable doubt and is accordingly ordered immediately released from custody unless he is being lawfully held for another offense.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Carpio-Morales,^[*] (Acting Chairperson), Velasco, Jr., Leonardo-De Castro,^[**] and Brion, JJ., concur.

[*] Acting Chairperson.

[**] Per Special Order No. 619, Justice Teresita Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave.

[1] Rollo, pp. 9-32.

[2] Id. at 37-46; The decision was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon.

[3] 19th Division, Cebu City.

[4] Rollo, pp. 48-49.

[5] Id. at 33-35.

[6] Records, p. 1.

[7] Records, p. 12.

[8] TSN, 1 March 2001, pp. 3-4.

[9] TSN, 1 March 2001, pp. 5-7; TSN, 25 October 2001, pp. 3-6, 9-11.

[10] TSN, 25 October 2001, pp. 12-16, 18-23; TSN, 3 January 2002, p. 3; TSN, 1 March 2001, pp. 7-9.

[11] TSN, 1 March 2001.

[12] TSN, 7 November 2001, pp. 4-6.

[13] TSN, 25 October 2001, pp. 21, 25.

[14] Id. at 19-20, 23.

[15] TSN, 3 January 2002, pp. 3-5.

[16] Id. at 9-10.

[17] TSN, 24 October 2001, pp. 3-6.

[18] Records, p. 280; The report bore serial numbers D-314-2000.

[19] TSN, 29 August 2002, pp. 6-9.

[20] TSN, 25 November 2002, pp. 4-6.

[21] TSN, 29 August 2002, pp. 8-12.

[22] TSN, 17 February 2003, pp. 3-11.

[23] TSN, 29 August 2002, pp. 14-15.

[24] TSN, 22 August 2002, pp. 3-8; TSN, 28 August 2002, pp. 2-8

[25] Rollo, p. 35; The dispositive portion of the trial court's decision reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding GUIDO CATUIRAN y NECUDEMOS, GUILTY beyond reasonable doubt for the crime of Violation of Section 16, Article III of the Dangerous Drugs Act of 1972, as amended, and is hereby sentenced to suffer the indeterminate penalty of One (1) year, Eight (8) months and Twenty-one (21) days to Two (2) years and Four (4) months of prision correccional minimum in its maximum period.

For insufficiency of evidence, the criminal complaint against ROBERT CATUIRAN y NECUDEMOS should be, as it is hereby, DISMISSED.

For want of evidence showing that the One Thousand Four Pesos and Fifty Centavos (P1,004.50) are proceeds of the crime, said sum of money is ordered return[ed] to accused Guido Catuiran.

The two heat-sealed transparent plastic bags containing a total weight of 8.62 grams of Methamphetamine Hydrochloride (shabu) is ordered turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with law.

SO ORDERED.

[26] Id. at 45. The Court of Appeals disposed of the case as follows:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DISMISSED and the impugned Decision dated July 3, 2003 of the RTC of Kalibo, Aklan, Branch 5 in Crim. Case No. 5834 is hereby AFFIRMED.

SO ORDERED.

[27] Supra note 4.

[28] Rollo, pp. 20-21.

[29] Id. at 80-83.

[30] People v. Pedronan, 452 Phil. 226, 233 (2003); People v. Casimiro, 432 Phil. 966, 974-975 (2002); People v. Laxa, 414 Phil. 156, 162-163 (2001).

[31] People v. Obmiranis, G.R. No. 181492, 16 December 2008; People v. Simbahon, 449 Phil. 74, 81 (2003); People v. Laxa, 414 Phil. 156, 170 (2001).

[32] People v. Obmiranis, G.R. No. 181492, 16 December 2008; Mallillin v. People, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632; People v. Kimura, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 70; People v. Simbahon, 449 Phil. 74, 83 (2003).

[33] AN ANALYTICAL APPROACH TO EVIDENCE, RONALD J. ALLEN, RICHARD B. KUHNS, by Little Brown & Co., U.S.A, 1989, p. 174.

[34] Mallillin v. People, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632, citing United States v. Howard-Arias, 679 F.2d 363, 366; United States v. Ricco, 52 F.3d 58.

[35] Mallillin v. People, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 633, citing EVIDENCE LAW, ROGER C. PARK, DAVID P. LEONARD, STEVEN H. GOLDBERG, 1998, 610 Opperman Drive, St. Paul Minnesota, p. 507.

[36] People v. Obmiranis, G.R. No. 181492, 16 December 2008.

[37] Mallillin v. People, supra; People v. Obmiranis, G.R. No. 181492, 16 December 2008; Carino v. People, G.R. No. 178757, 13 March 2009, all citing EVIDENCE LAW, ROGER C. PARK, DAVID P. LEONARD, STEVEN H. GOLDBERG, 1998, 610 OPPERMAN DRIVE, ST. PAUL MINNESOTA, p. 507; 29A AM. JUR. 2d EVIDENCE §946.

[38] Mallillin v. People, supra; People v. Obmiranis, G.R. No. 181492, 13 March 2009; Carino v. People, G.R. No. 178757, 13 March 2009.

[39] Mallillin v. People, G.R. No. 172953, 30 April 2008; People v. Obmiranis, G.R. No. 181492, 13 March 2009; Carino v. People, G.R. No. 178757, 13 March 2009, citing Graham v. State, 255 N.E2d 652, 655.

[40] Supra.

[41] Supra.

[42] G.R. No. 173480, 25 February 2009. The case cited the case of Mallillin v. People, G.R. No. 172953, April 30, 2008 as "Lopez v. People."

[43] G.R. No. 178757, 13 March 2009.

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