

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NICOLAS GUTIERREZ Y LICUANAN APPELLANT.

G.R. No. 179213. September 03, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed in the present appeal is the April 30, 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01991 affirming that of Branch 267 of the Regional Trial Court of Pasig City in Criminal Case No. 12514-D finding Nicolas Gutierrez y Licuanan alias Nick (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with illegal sale of 0.05 gram of shabu and illegal possession of paraphernalia "fit or intended for smoking . . . or introducing any dangerous drug into the body" by two separate Informations, both dated June 19, 2003, reading:

First Information

- The Prosecution, through the undersigned Public Prosecutor, charges Nicolas Gutierrez y Licuanan with the crime of violation of Section 5, Art. II of R.A. 9165 (SC-AM 99-1-13), committed as follows:

- On or about June 16, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Michael P. Espares, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing five centigrams (0.05 grams) [sic] of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.[1] (Underscoring supplied)

x x x x

Second Information

- The Prosecution, through the undersigned Public Prosecutor, charges Nicolas Gutierrez y Licuanan with the crime of violation of Section 12, Art. II of R.A. No. 9165, committed as follows:

On or about June 16, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control the following paraphernalias fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body, to wit:

- one (1) unsealed transparent plastic sachet containing traces of white crystalline substance marked as exh-B;
- one (1) pair of scissors marked as exh.-C; and
- one (1) transparent plastic sachet containing five (5) empty transparent plastic sachets marked as exh-D.

x x x x

specimen marked as exh-B was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.[2] (Underscoring supplied)

On arraignment, appellant pleaded not guilty.[3] The trial court, after trial, acquitted appellant of the charge subject of the second Information (illegal possession of paraphernalia), hence, this Decision shall dwell only on the review of appellant's conviction of selling shabu.

From the testimonies of three members of the team which conducted a buy-bust transaction that spawned the filing of the Informations - PO1 Michael Espares (PO1 Espares),[4] SPO3 Leneal Matias (SPO3 Matias),[5] and PO1 Allan Mapula (PO1 Mapula),[6] the following version of the prosecution is gathered:

At around 5:00 p.m. on June 16, 2003, while on duty at the Drug Enforcement Unit of the Pasig City Police Force, SPO3 Matias received information via telephone from a concerned citizen that a certain alias "Nick," later identified to be appellant, was peddling shabu along San Agustin Street, Barangay Palatiw, Pasig City. On the instructions of SPO3 Matias, PO1 Espares and PO1 Mapula proceeded to, and surveilled, the area and confirmed the information.

SPO3 Matias thus formed a buy-bust team, which he headed, with PO1 Espares as poseur-buyer, and PO1 Mapula and PO1 Michael Familara (PO1 Familara) as members. Five marked twenty-peso bills were given to PO1 Espares as buy-bust money. The team thereafter went to the target area and met with a confidential asset who was to assist them in the operation.

While the other members of the team were strategically positioned, the asset, accompanied by PO1 Espares, approached appellant and asked him "Pare, meron ka ba diyan? Bibili kami. Bibili ako ng piso." Apparently not having heard the entire utterances, appellant replied, "Magkano ba bibilhin mo?" (How much are you buying?), to which PO1 Espares replied "Piso lang, eto pera" at the same time tendering the buy-bust money which appellant took and placed in his right front pocket. Appellant then drew from his pants' back pocket a black plastic case, opened it and took one plastic sachet containing a white crystalline substance which he handed to PO1 Espares. PO1 Espares thereupon executed the pre-arranged signal, apprehended appellant, and confiscated the black plastic case which appellant was holding. The case yielded a pair of scissors, an unsealed plastic sachet containing traces of white crystalline substance, and five empty plastic sachets.

Heeding the pre-arranged signal, the other members of the team closed in to assist PO1 Espares who then marked all the seized items including the plastic sachet containing the substance subject of the sale. Appellant was brought to the police station wherein the confiscated items were surrendered to an investigator.

Appellant, for his part, presented the following version:[7]

At about 7:30 p.m. on June 16, 2003, while he was at home having dinner with his wife Josephine, daughter Jennifer and her husband, someone kicked open the door of their house. Four armed men in civilian clothes immediately entered, handcuffed and frisked him, and confiscated his wallet. On asking them what his offense was, he was simply told to explain at the police station. Jennifer, too, asked the armed men what the offense of appellant was, but she received no answer.

He was thereafter brought to the Pariancillo police precinct where a police officer showed him a plastic sachet and threatened that a case would be filed against him unless he paid P20,000. He failed to pay, however, hence, he was detained and subsequently charged.

Appellant's wife Josephine and daughter Jennifer corroborated appellant's tale on the circumstances surrounding

his arrest.[8]

Appellant's neighbor Jose de Guzman, who also took the witness stand, stated that at about 7:45 p.m. on June 16, 2003, he saw appellant come out of his house handcuffed and escorted by four persons who all boarded an owner-type jeep.[9]

By Decision of January 18, 2006,[10] the trial court convicted appellant of illegal sale of shabu. As reflected earlier, appellant was exonerated of the charge of illegal possession of paraphernalia. Thus, the trial court disposed:

WHEREFORE, in view of the foregoing considerations, the prosecution having proven the guilt of the accused beyond reasonable doubt, this Court, acting as a Special Drug Court in the above-captioned case, hereby finds NICOLAS GUTIERREZ y LICUANAN, GUILTY as charged and is hereby sentenced in Criminal Case No. 12514-D for Violation of Section 5, Republic Act No. 9165, to suffer LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (Php 500,000.00)

In so far as Criminal Case No. 12515-D for Violation of Section 12, Republic Act No. 9165, considering that the prosecution failed to prove the guilt of the accused NICOLAS GUTIERREZ y LICUANAN of the said crime, the latter is hereby acquitted thereof. (*Italics in the original; emphasis and underscoring supplied*)

In convicting appellant of illegal sale of shabu, the trial court found that the prosecution sufficiently established the corpus delicti consisting of the buy-bust money paid to appellant and the shabu purchased from him. It added that appellant's defense of frame-up was not supported by clear and convincing evidence.

On appeal, the Court of Appeals affirmed appellant's conviction by Decision of April 30, 2007,[11] hence, the present appeal.

Appellant argues that he was a victim of an invalid warrantless search and arrest. He maintains that he was merely having dinner with his family when four unidentified armed men barged into their house. He cites an inconsistency in the testimonies of PO1 Espares and SPO3 Matias that he claims destroys their credibility, viz: PO1 Espares declared that the pre-arranged signal at the buy-bust operation was that he would light a cigarette, while SPO3 Matias stated that PO1 Espares was to flick the sachet containing shabu.[12]

The Solicitor General counters that since appellant was caught in flagrante in a buy-bust operation, the police officers were not only authorized but were also obligated to effect a warrantless arrest and seizure, adding that frame-up is a common and standard line of defense which appellant failed to support with clear and convincing evidence.[13]

The appeal is impressed with merit.

Under Section 5, Article II of R.A. No. 9165,[14] the elements necessary in a prosecution for the illegal sale of shabu are: the identity of the buyer and the seller; the object and the consideration; and the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale transpired, coupled with the presentation in court of the corpus delicti -- the body or substance of the crime which establishes the fact that a crime has actually been committed.[15]

In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[16] Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the corpus delicti.[17] The "chain of custody" rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[18]

Section 1 (b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002[19] 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 plants source of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. (Emphasis and underscoring supplied)

In *Malillin v. People*,[20] the Court explained how it expects the chain of custody or "movement" of the seized evidence to be maintained:

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 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.

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 really 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. (Underscoring supplied)

The Court finds that the evidence for the prosecution failed to establish the chain of custody of the allegedly seized shabu. That the defense stipulated on these matters, viz: that the specimen exists, that a request has been made by the arresting officers for examination thereof, that a forensic chemist examined it, and that it tested positive for methylamphetamine hydrochloride has no bearing on the question of chain of custody. These stipulations, which merely affirm the existence of the specimen, and the request for laboratory examination and the results thereof, were entered into during pre-trial only in order to dispense with the testimony of the forensic chemist and abbreviate the proceedings. That such is the intention of the parties is clear from the additional stipulations that the forensic chemist had no personal knowledge as to the source of the alleged specimen; and that the defense was reserving its right to object to the pieces of evidence marked by the prosecution.[21] Clearly, the stipulations do not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left her possession.

To interpret the stipulations as an admission that appellant was the source of the specimen would be to bind him to an unceremonious withdrawal of his plea of not guilty - a reading not supported by the records which creates a dangerous precedent.

The nagging question, therefore, remains whether the object evidence subjected to laboratory examination and presented in court is the same object allegedly seized from appellant.

While alleged poseur-buyer PO1 Espares testified on the marking and eventual turnover of the allegedly seized sachet of substance to the investigator, no explanation was given regarding its custody in the interim - from the time it was turned over to the investigator to its turnover for laboratory examination. Such want of explanation bares a significant gap in the chain of custody of the allegedly seized item. Having merely substantially echoed the testimony of PO1 Espares, SPO3 Matias and PO1 Mapula did not fill in this gap.

And what happened to the allegedly seized shabu between the turnover by the chemist to the investigator and its presentation in court, the records do not show.

The Court made it clear in *Malillin* that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it is offered in evidence, in such a way that every person who touched it 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. The totality of the prosecution evidence does not meet this standard. It bears no account of the precautions taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof.

The Court reiterates that on account of the built-in danger of abuse that a buy-bust operation carries, it is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of persons under criminal investigation^[22] and of the accused facing a criminal charge^[23] are safeguarded. In *People v. Tan*,^[24] the Court expressed this concern as it recognized that "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, it exhorted courts to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

At this juncture, the Court notes another lapse of the members of the buy-bust team - their failure to comply with the procedural requirements of Section 21, Paragraph 1 of Article II of R.A. No. 9165^[25] with respect to custody and disposition of confiscated drugs. There was no physical inventory and photograph of the shabu allegedly confiscated from appellant. There was likewise no explanation offered for the non-observance of the rule. Coupled with the failure to prove that the integrity and evidentiary value of the items adduced were not tainted, the buy bust team's disregard of the requirements of Section 21 is fatal.

It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing on record suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.^[26]

WHEREFORE, the assailed decision of the Court of Appeals is REVERSED and SET ASIDE. Appellant, Nicolas Gutierrez y Licuanan, is ACQUITTED of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is ORDERED to cause the immediate release of appellant unless he is being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice hereof.

SO ORDERED.

Quisumbing, (Chairperson), Brion, Del Castillo, and Abad, JJ., concur.

[1] Records, p. 1.

[2] Id. at 13.

[3] Id. at 23.

[4] TSN of March 15, 2004, id. at 92-122.

[5] TSN of June 16, 2004, id. at 123-132.

[6] TSN of August 4, 2004, id. at 133-147.

[7] TSN of September 12, 2005, id. at 164-178.

[8] Vide TSN of April 5, 2005, id. at 157-163; TSN of February 9, 2005, id. at 151-156.

[9] Vide TSN of November 7, 2005, id. at 179-185.

[10] Id. at 188-199.

[11] Penned by Associate Justice Portia Aliño-Hormachuelos, with the concurrence of Associate Justices Edgardo F. Sundiam and Monina Arevalo Zenarosa, CA rollo, pp. 95-110.

[12] Vide Brief for Appellant, id. at 36-49.

[13] Vide Brief for Appellee, id. at 68-89.

[14] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. -- The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy, regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. . .

[15] Vide *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554, 562.

[16] Vide *People v. Simbahon*, G.R. No. 132371, April 9, 2003, 401 SCRA 94, 99.

[17] *People v. Kimura*, G.R. No. 130805, April 27, 2004, 428 SCRA 51, 70.

[18] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[19] 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 Implementing Rules and Regulations of R.A. No. 9165 in relation to Section 81 (b), Article IX of R.A. No. 9165; adopted and approved on October 18, 2002.

[20] *Supra* note 19 at 632-633.

[21] Vide Pre-Trial Order, records, pp. 39-40.

[22] Article III (Bill of Rights), Section 12 (1) of the Constitution reads: Any person under investigation for the

commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

[23] Article III (Bill of Rights), Section 14 (2) of the Constitution reads: In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. Vide also Rule 115 (Rights of Accused), Rules of Court.

[24] G.R. No. 133001, December 14, 2000, 348 SCRA 116, 126-127.

[25] Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. -- The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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[.]

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

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