PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERALD LIBREA, APPELLANT.

G.R. No. 179937. July 17, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Gerald Librea (appellant) was charged and convicted by the Regional Trial Court (RTC) of Lipa City, Batangas of violation of Section 5, Article II of Republic Act (RA) No. 9165.

The Information against appellant reads:

> That on or about the 9[th] day of October 2003 at about 7:30 o'clock [sic] in the evening at Basang Hamog, Barangay 1, Lipa City, Philippines, the above-named accused, without authority of law, did then and there willfully, unlawfully sell, deliver, dispose or give away to a police officer/informer-poseur buyer, 0.04 grams/s of Methamphetamine Hydrochloride locally known as "shabu", which is a dangerous drug, contained in one (1) plastic sachet/s.[1] (Underscoring supplied)

At the pre-trial, appellant admitted, among other things, the "authenticity and due execution of Chemistry Report No. D-2424-03 prepared by P/Sr. Insp. Lorna R. Tria, but den[ied] that the specimen subject matter thereof came from [him]."[2]

From the testimonies of prosecution witnesses PChief Insp. Dante Novicio (Novicio) and SPO1 Alexander Yema (Yema) of the Anti-Illegal Drugs Special Operation Task Force (Task Force) of the Lipa City Police Station, the following version is gathered:[3]

On receipt from an "asset-informant" by Novicio of information that appellant was actively pushing drugs in various areas of Lipa City, surveillance and a test-buy was conducted which validated the information.

A buy-bust operation was soon conducted on October 9, 2003 at around 7:30 in the evening at "a squatters area" in Basang Hamog, Barangay 1, Lipa City, about 30 meters from the police station. Novicio, Yema, and PO1 Cleofe Pera (Cleofe), in the company of the informant who was given two P100 bills on which were marked "DPN" beside their serial numbers,[4] repaired to Basang Hamog. As the informant approached appellant who was standing by a store, Novicio, Yema, and Cleofe positioned themselves at a spot seven to ten meters away from appellant.

After the informant spoke to appellant to whom he gave the marked bills, appellant handed him a small plastic sachet which he scrutinized and brought to the members of the buy-bust team. Soon after Yema received the sachet and smelled it to be shabu, he, Novicio, and Cleofe approached appellant, introduced themselves as members of the police force, informed him of his rights, arrested him, and conducted a body search which yielded the two marked P100 bills.

Appellant was thereupon brought to the police station where Yema marked the sachet with "ACY" (representing his initials) on one side and "GCL" (representing the initials of appellant) on the other. Cleofe at once prepared

the Inventory of Confiscated/Seized Items (Inventory)[5] on which appellant refused to affix his signature and a request for laboratory examination.

Upon the other hand, appellant gave his version as follows:[6]

After 7:00 in the evening of October 9, 2003, while he was at the store of his aunt Ester Calingasan (Ester) waiting for the pancit which he had ordered, three police officers arrived, arrested him, and forcibly took him to the police headquarters where he was detained. No test-buy or buy-bust operation took place. He saw the Inventory and the plastic sachet for the first time during the trial.

Ester corroborated appellant's testimony, adding that after he was arrested, she fetched his mother and accompanied her to the police headquarters where appellant was detained.

Branch 12 of the Lipa City RTC convicted appellant as charged, disposing as follows:

> WHEREFORE, the Court finds the accused, GERALD LIBREA y CAMITAN, guilty beyond reasonable doubt, as principal by direct participation, of the crime of Violation [of] Section 5, 1[st] paragraph, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of P500,000.00 and the costs.
>
> The 0.04 gram of methamphetamine hydrochloride subject of this case is forfeited in favor of the government and ordered turned over to the Chief of Police of Lipa City for proper disposal in accordance with law.
>
> Also, let the corresponding commitment order be issued for the transfer of detention of the accused to the Bureau of Correction, Muntinlupa City, Metro Manila.
>
> Given this 14[th] day of September, 2005 at Lipa City.[7]

Before the Court of Appeals, appellant faulted the trial court

> I
>
> x x x IN CONVICTING [HIM] FOR VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165 NOTWITHSTANDING THE NON-PRESENTATION OF THE POSEUR-BUYER.
>
> II
>
> x x x IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION POLICE WITNESSES NOTWITHSTANDING THE IRREGULARITIES IN THE PERFORMANCE OF THEIR DUTIES.
>
> III
>
> x x x IN FINDING [HIM] GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[8] (Underscoring supplied)

By Decision[9] of June 29, 2007, the Court of Appeals affirmed the trial court's decision, hence, the present appeal.[10] Both appellant and the Solicitor General adopted their respective arguments in the Briefs they had filed before the appellate court.[11]

Appellant assails, among other things, the failure of the buy-bust team to photograph the allegedly confiscated sachet and to have a representative of the media as well as of the Department of Justice (DOJ) sign the Inventory of Confiscated/Seized Items, as required under Section 21 of RA 9165.[12]

Non-compliance by the apprehending/buy-bust team with Section 21 of R.A. No. 9165 is not fatal as long as there is justifiable ground therefor and the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team.[13]

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The prosecution justifies the failure of the buy-bust team to have the confiscated sachet photographed with the non-availability of a photographer.[14] And it claims that no DOJ, as well as media representative, arrived at the time and after the buy-bust operation took place. Without passing on the merits of this claim, the Court finds that the integrity, as well as the evidentiary value of the confiscated item, was not shown to have been preserved.

While Yema claimed to have marked the plastic sachet at the police station, what was done to it afterwards remains unexplained.

And there is no showing that the substance allegedly confiscated was the same substance which was subjected to examination.[15] As earlier mentioned, while during pre-trial appellant admitted the authenticity and due execution of the laboratory report, he denied that the specimen subject thereof was taken from him.

More. The request for forensic examination, together with the specimen, was delivered to the laboratory by a certain SPO4 D.R. Mercado (Mercado),[16] who was not part of the buy-bust team, at 11:15 in the morning of October 10, 2003, a day after the conduct of the alleged buy-bust operation. There is no showing, however, under what circumstances Mercado, who did not take the witness stand, came into possession of the specimen. Apropos is the Court's ruling in People v. Ong:[17]

> x x x [T]he Memorandum-Request for Laboratory Examination . . . indicates that a certain SPO4 Castro submitted the specimen for examination. However, the rest of the records of the case failed to show the role of SPO4 Castro in the buy-bust operation, if any. x x x
>
> x x x Since SPO4 Castro appears not to be part of the buy-bust team, how and when did he get hold of the specimen examined by Police Inspector Eustaquio? Who entrusted the substance to him and requested him to submit it for examination? For how long was he in possession of the evidence before he turned it over to the PNP Crime Laboratory? Who else had access to the specimen from the time it was allegedly taken from appellants when arrested? These questions should be answered satisfactorily to determine whether the integrity of the evidence was compromised in any way. Otherwise, the prosecution cannot maintain that it was able to prove the guilt of the appellants beyond reasonable doubt.[18] (Emphasis and underscoring supplied)

On this score alone, the Court finds that the prosecution failed to prove beyond reasonable doubt the guilt of appellant. His acquittal is thus in order.

WHEREFORE, the Decision of the Court of Appeals dated June 29, 2007 is REVERSED and SET ASIDE. Appellant, GERALD LIBREA, is ACQUITTED of the crime charged and is ordered released from custody, unless he is being held for some other lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, who is DIRECTED to implement it immediately and to inform this Court within five (5) days of action taken.

SO ORDERED.

Quisumbing, (Chairperson), Chico-Nazario,[*] Leonardo-De Castro,[**] and Brion, JJ., concur.

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[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

[1] Records, p. 3.

[2] Id. at 21.

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[3] Vide TSN, June 2, 2004, pp. 2-15, TSN, September 6, 2004, pp. 2-17, TSN, December 13, 2004, pp. 2-20.

[4] Exhibit "C," Exhibits for the Prosecution.

[5] Exhibit "A," Exhibits for the Prosecution.

[6] TSN, July 6, 2005, pp. 2-17; TSN, August 17, 2005, pp. 2-14.

[7] Records, p. 91.

[8] CA rollo, p. 33.

[9] Penned by Court of Appeals Associate Justice Marina L. Buzon, with the concurrence of Court of Appeals Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan-Castillo, id. at 87-94.

[10] Id. at 97-98.

[11] Rollo, pp. 22-24, 31-35.

[12] Vide CA rollo, pp. 40-41.

[13] Vide People v. Pringas, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842.

[14] TSN, June 2, 2004, pp. 11-12.

[15] Vide People v. Ong, G.R. No. 137348, June 21, 2004, 432 SCRA 470, 488.

[16] Exhs. "B" - "B-1," Exhibits for the Prosecution.

[17] People v. Ong, G.R. No. 137348, June 21, 2004, 432 SCRA 470.

[18] Id. at 489-490.

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