

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERALDINE MAGAT Y PADERON, APPELLANT.*G.R. No. 179939. September 29, 2008*

Ponente: TINGA, J.

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Two separate informations[1] for violations of Sections 5 and 11 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, were filed against appellant Geraldine Magat y Paderon. She pleaded not guilty to both charges at the arraignment.[2]

The prosecution presented PO1 Philip Santos (PO1 Santos) who was assigned at the Drug Enforcement Unit of the Meycauayan Police Station and had acted as the poseur-buyer in the buy-bust operation. The testimony of forensic chemist P/Insp. Nellson Cruz Sta. Maria was dispensed with in view of the defense's admission that if the chemist were placed on the witness stand he could identify the Request for Laboratory Examination[3] and Chemistry Report No. D-403-2003,[4] with the qualification that the chemist had no personal knowledge of the facts surrounding the arrest of appellant and the source of the specimen examined.[5] The testimonies of PO1 Manuel Mendoza (Mendoza) and Michael Sarangaya (Sarangaya), who were PO1 Santos's backup during the entrapment operation, were likewise dispensed with as the defense admitted that it would merely corroborate the testimony of PO1 Santos.[6]

According to the evidence for the prosecution, the facts are as follows:

On 7 and 8 of June 2003 and in the morning of 9 June 2003, a buy-bust team composed of policemen conducted surveillance operations on appellant on account of a validated report from a concerned citizen that she was engaged in selling illegal drugs.[7]

With PO1 Santos to act as the poseur-buyer and two P100.00 bills as buy-bust money, in the afternoon of 9 June 2003 at about 4:20 p.m. the policemen proceeded to the target place and reached appellant's premises 30 minutes later. They saw appellant standing in front of her house. PO1 Santos asked appellant "Ate, meron bang dalawang piso?" After looking at him, appellant said "Okay!" and then went inside her house. When appellant came back, she asked for money from him and so PO1 Santos handed her the two marked P100.00 bills. In turn, appellant gave the plastic sachet of shabu to him. Thereafter, PO1 Santos executed the pre-arranged signal by scratching his head, prompting his companions to approach them. PO1 Santos, introducing himself as a policeman, arrested appellant. He informed appellant that she was being arrested for violation of R.A. No. 9165. The policemen requested appellant to empty her pockets. Appellant complied; her right pocket yielded another sachet of shabu. They got back the two marked P100.00 bills from appellant's left hand.[8]

They brought appellant to the police station where they booked her. PO1 Santos marked the plastic sachets containing shabu with his initials "PCS" and the letters "A" and "B" for examination. The plastic sachets were examined at the PNP Crime Laboratory Office; the examination yielded positive for methamphetamine hydrochloride.[9] PO1 Santos admitted during cross-examination that although it was confirmed that appellant

was selling illegal drugs he did not secure a search warrant since their chief's instruction to them was to conduct a buy-bust operation.[10] He also admitted that he did not coordinate the buy-bust operation with the barangay officials and did not verify whether appellant was a drug peddler.[11]

Appellant denied the charges against her and testified that between 4:00 to 5:00 p.m. on 9 June 2003, while she was taking a bath, policemen PO1 Santos, Sarangaya, and Mendoza barged into her house. Hearing the noise, she came out of the comfort room and proceeded upstairs where she saw the policemen already searching the place. After the search, they brought her to the Meycauayan Police Station and detained her for one day for alleged violations of the anti-drug law. Appellant further testified that at the time the policemen arrested her, her children were playing about three meters away from her house and that no one saw her being brought to the police station.[12]

To corroborate appellant's testimony, Teresa Manebo (Manebo), her neighbor, testified that on 9 June 2003, at about 4:00 p.m., while she was at the artesian well inside appellant's compound, a man in civilian clothes arrived and knocked at the door of the comfort room where appellant was taking a bath. Appellant informed the man to wait as she was dressing while Manebo was looking at them. Another man arrived as appellant went out of the comfort room. The men talked to appellant for about 30 minutes. They asked her about the whereabouts of her husband. Afterwards, four other men arrived. Appellant and the men went inside the house. When they came out, she saw appellant crying as the men took her away.[13]

On cross-examination, Manebo declared that the two persons who arrived came one after the other within a ten-minute interval. They talked with appellant for about 30 minutes. She admitted that she did not hear the entire conversation. When the four other men arrived, they went upstairs, and stayed there for an hour.[14] At the time appellant was talking with the two men, she was just two meters away from them. The men asked appellant about her husband's whereabouts. She watched them for 30 minutes.[15]

In a Decision[16] dated 21 February 2006, the Regional Trial Court (RTC) of the City of Malolos, Bulacan, Branch 78 found her guilty beyond reasonable doubt of violating Sections 5[17] and 11[18] of R.A. No. 9165. Appellant filed a notice of appeal dated 7 March 2006 to the Court of Appeals.[19]

The Court of Appeals affirmed the decision of the RTC in a decision promulgated on 7 June 2007.[20] Appellant filed a notice of appeal dated 20 June 2007 with this Court.[21]

Appellant raised before this Court and the Court of Appeals the lone issue of whether the trial court erred in convicting her despite the prosecution's failure to establish the identity of the prohibited drugs, which constitute the corpus delicti of the offense.

The appeal is meritorious.

In all prosecutions for violation of R.A. No. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the corpus delicti or the illicit drug as evidence.[22] The existence of dangerous drugs is a condition sine qua non for conviction for the illegal sale and possession of dangerous drugs, it being the very corpus delicti of the crimes.[23]

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[24] were not complied with. PO1 Santos admitted that he marked the two plastic sachets containing white crystalline substance in the police station.[25] He did not mark the seized items immediately after he arrested appellant in the latter's presence. He also did not make an inventory and take a photograph of the confiscated materials in the presence of appellant. Other than the three policemen, there were no other people who participated in the alleged buy-bust operation.[26] 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.

A review of jurisprudence, even prior to the passage of the R.A. No. 9165, shows that this Court did not hesitate to strike down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No. 9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7, Series of 1974.[27]

In *People v. Laxa*,[28] the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the appellant. One policeman even admitted that he marked the seized items only after seeing them for the first time in the police headquarters. The Court held that the deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana and concluded that the prosecution failed to establish the identity of the corpus delicti.[29]

Similarly, in *People v. Kimura*,[30] the Narcom operatives failed to place markings on the alleged seized marijuana on the night the accused were arrested and to observe the procedure in the seizure and custody of the drug as embodied in the aforementioned Dangerous Drugs Board Regulation No. 3, Series of 1979. Consequently, we held that the prosecution failed to establish the identity of the corpus delicti.

In *Zaragga v. People*,[31] involving a violation of R.A. No. 6425, the police failed to place markings on the alleged seized shabu immediately after the accused were apprehended. The buy-bust team also failed to prepare an inventory of the seized drugs which accused had to sign, as required by the same Dangerous Drugs Board Regulation No. 3, Series of 1979. The Court held that the prosecution failed to establish the identity of the prohibited drug which constitutes the corpus delicti.[32]

In all the foregoing cited cases, the Court acquitted the appellants due to the failure of law enforcers to observe the procedures prescribed in Dangerous Drugs Board Regulation No. 3, Series of 1979, amending Board Regulation No. 7, Series of 1974, which are similar to the procedures under Section 21 of R.A. No. 9165. Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165.

In the present case, although PO1 Santos had written his initials on the two plastic sachets submitted to the PNP Crime Laboratory Office for examination, it was not indubitably shown by the prosecution that PO1 Santos immediately marked the seized drugs in the presence of appellant after their alleged confiscation. There is doubt as to whether the substances seized from appellant were the same ones subjected to laboratory examination and presented in court.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they have to be subjected to scientific analysis to determine their composition and nature. Congress deemed it wise to incorporate the jurisprudential safeguards in the present law in an unequivocal language to prevent any tampering, alteration or substitution, by accident or otherwise. The Court, in upholding the right of the accused to be presumed innocent, can do no less than apply the present law which prescribes a more stringent standard in handling evidence than that applied to criminal cases involving objects which are readily identifiable.

R.A. No. 9165 had placed upon the law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the corpus delicti. Thru proper exhibit handling, storage, labeling and recording, the identity of the seized drugs is insulated from doubt from their confiscation up to their presentation in court.

Recently, in *People v. Santos, Jr.*,[33] which involved violation of Sections 5 and 11, Article II of R.A. No. 9165,

the Court agreed with the Office of the Solicitor General's observation that the identity of the corpus delicti has not been sufficiently established since the confiscated plastic sachets of shabu have been marked/initialed at the scene of the crime, according to proper procedure. Citing *People v. Lim*,^[34] which specified that any apprehending team having initial control of illegal drugs and/or paraphernalia should, immediately after seizure or 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 requirement raises doubt whether what was submitted for laboratory examination and presented in court is the same drug and/or paraphernalia as that actually recovered from the accused.

While the seized drugs may be admitted in evidence, it does not necessarily follow that the same should be given evidentiary weight if the procedure in Section 21 of R.A. No. 9165 was not complied with. The Court stressed that the admissibility of the seized dangerous drugs in evidence should not be equated with its probative value in proving the corpus delicti. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.^[35]

The presumption of regularity in the performance of official duty relied upon by the courts a quo cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.^[36] Although the evidence for the defense is weak, the prosecution must rely on the weight of its own evidence and cannot draw strength from the weakness of the defense.^[37]

All told, the corpus delicti in this case is not legally extant.

WHEREFORE, the Decision dated 21 February 2006 of the Regional Trial Court of Malolos, Bulacan, Branch 78 in Criminal Case Nos. 2158-M-2003 and 2159-M-2003 is REVERSED and SET ASIDE. Appellant Geraldine Magat y Paderon is ACQUITTED of the crimes charged on the ground of reasonable doubt and ordered immediately RELEASED from custody, unless she 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.

Let a copy of this decision be forwarded to the PNP Director and the Director General of the Philippine Drug Enforcement Agency for proper guidance and implementation. No costs.

SO ORDERED.

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

[1]Record, pp. 2, 5. Criminal Case No. 2158-M-2003 reads:

That on or about the 9[th] day of [June 2003], in the municipality of Meycauayan, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of [M]ethylamphetamine [H]ydrochloride weighing 0.096 gram.

Contrary to law.

Criminal Case No. 2159-M-2003 reads:

That on or about the 9[th] day of [June 2003], in the municipality of Meycauayan, province of Bulacan,

Philippines and within the jurisdiction of this Honorable Court, the above named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in her possession and control dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of [M]ethylamphetamine [H]ydrochloride weighing 0.079 gram.

Contrary to law.

[2]Id. at 18-20.

[3] Id. at 9.

[4]Id. at 10. The pertinent portion reads:

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

A ("A PCS") = 0.096 gram

B ("B PCS") = 0.079 gram

xxx xxx xxx

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drug. xxx

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for the presence of Methylamphetamine hydrochloride, a dangerous drug. xxx

CONCLUSION:

Specimens A and B contain Methylamphetamine hydrochloride, a dangerous drug. xxx

TIME & DATE COMPLETED: 1610H 10 June 2003

[5] Id. at 82-83.

[6]Id. at 55-56.

[7]Id. at 146-148.

[8]Id. at 135-139; 150-152.

[9]Id. at 139-142.

[10] Id. at 148-149.

[11] Id. at 152.

[12] Id. at 158-159; 163-167.

[13]Id. at 173-183.

[14]Id. at 186-188.

[15]Id. at 189-191.

[16] Id. at 205-212. The decision was penned by Judge Gregorio Sampaga, the dispositive portion of which reads as follows:

WHEREFORE, the foregoing considered, this Court finds accused Geraldine Magat y Paderon GUILTY beyond reasonable doubt of the offense of [v]iolation of Sections 5 and 11, both under Art. II of R.A. [No.] 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences h[er]:

- In Criminal Case No. 2158-M-2003, to suffer the penalty of LIFE IMPRISONMENT AND A FINE OF P500,000.00; and

- In Criminal Case No. 2159-M-2003, to suffer the penalty of TWELVE YEARS AND ONE (1) DAY TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS OF IMPRISONMENT AND A FINE OF P300,000.00[.]

In the service of her sentence, accused shall be credited with the entire period of her preventive imprisonment.

The drugs subject matter of this case is hereby forfeited in favor of the government. The Branch Clerk of Court is hereby directed to turn over the same to the Dangerous Drugs Board for proper disposal thereof.

SO ORDERED. (Id. at 212)

[17]Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. â€- 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.

x x x x

[18] Section 11. Possession of Dangerous Drugs. â€- 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows: x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[19] Record, pp. 215-216.

[20]Rollo, pp. 2-13. The decision was penned by Associate Justice Josefina Guevara-Salonga, and concurred in by Associate Justices Vicente Roxas and Ramon Garcia. The dispositive portion reads:

WHEREFORE, the foregoing considered, the appeal is DENIED. No costs.

SO ORDERED. (Id. at 12)

[21]Id. at 14-15.

[22] People v. Hajili, 447 Phil. 283, 295 (2003).

[23] People v. Almeida, 463 Phil. 637, 648 (2003), citing People v. Mendiola, 235 SCRA 116 (1994). See also People v. Kimura, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 61, citing People v. Mendiola, supra; People v. Macuto, 176 SCRA 762 (1989); People v. Vocente, 188 SCRA 100 (1990); and People v. Mariano, 191 SCRA 136 (1990).

[24] Sec. 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.â€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:

a) 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; x x x x. (Emphasis supplied)

[25] Record, pp. 139-140.

[26]Id. at 150; 152.

[27] Board Regulation No. 3, S. 1979 as amended by Board Regulation No. 2, S. 1990 cited in People v. Kimura, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 69, reads:

Subject:Amendment of Board Regulation No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.

x x x x

SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure or 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. Thereafter the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination. (Emphasis supplied)

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation.

[28] 414 Phil. 156 (2001).

[29]Id. at 170-171.

[30] G.R. No. 130805, 27 April 2004, 428 SCRA 51, 69-70.

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

[32] Id. at 647-651.

[33] G.R. No. 175593, 17 October 2007, 536 SCRA 489, 504-505.

[34] G.R. No. 141699, 7 August 2002, 386 SCRA 581, 597-598, citing Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Board Regulation No. 2, S. 1990.

[35] *People v. Turco*, 392 Phil. 498, 516 (2000). See also *Ayala Land, Inc. v. ASB Realty Corporation and E. M. Ramos and Sons, Inc.*, G.R. No. 153667, 11 August 2005, 466 SCRA 521, citing *Permanent Savings and Loan Bank v. Velarde*, G.R. No. 140608, 23 September 2004, 439 SCRA 1; *PNOC Shipping & Transport Corp. v. CA*, 358 Phil. 38 (2000); *De la Torre v. CA*, 355 Phil. 628 (1998).

[36] *People v. Sevilla*, 394 Phil. 125, 158 (2000), citing *People v. Pagaura*, 267 SCRA 17 (1997), and *People v. De los Santos*, 314 SCRA 303 (1999).

[37] *People v. Samson*, 421 Phil. 104, 122 (2001).

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