

ROGELIO S. REYES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT.

G.R. No. 180177. April 18, 2012

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The burden rests in the Prosecution to see to it that the evidence of guilt satisfies the standard of moral certainty demanded in all criminal prosecutions. The standard demands that all the essential elements of the offense are established as to leave no room for any doubt about the guilt of the accused. The courts should unfailingly impose the standard in order to prevent injustice from being perpetrated against the accused.

Under review is the decision promulgated on September 28, 2007 by the Court of Appeals (CA),^[1] whereby the CA affirmed the conviction of petitioner by the Regional Trial Court (RTC), Branch 2, in Manila^[2] for violations of Section 5 and Section 11, Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002).

Antecedents

On February 23, 2005, the Office of the City Prosecutor of Manila filed two informations charging petitioner with illegal sale of shabu and illegal possession of shabu defined and punished, respectively, by Sections 5 and 11 of R.A. No. 9165,^[3] to wit:

Criminal Case No. 05234564

That on or about January 20, 2005, in the City of Manila, Philippines, the said accused, not being been (sic) authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell One (1) heat sealed transparent plastic sachet containing zero point zero two two (0.022) gram, of white crystalline substance known as “SHABU” containing methylamphetamine hydrochloride, which is a dangerous drug.

CONTRARY TO LAW.^[4]

Criminal Case No. 05234565

That on or about January 20, 2005, in the City of Manila, Philippines, the said accused, not being then authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control One (1) heat sealed transparent plastic sachet containing zero point zero two four (0.024) gram of white crystalline substance known as “SHABU” containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[5]

After petitioner pled not guilty, trial ensued. The summary of the evidence of the parties adduced at trial follows.

In the morning of January 20, 2005, a lady confidential informant went to the Police Station 8 of the Western

Police District to report on the drug-dealing activities of a certain alias Boy (later identified as petitioner) on M. Mapa Street, Sta. Mesa, Manila.[6] A buy-bust team of ten members,[7] including PO2 Erwin Payumo as designated poseur-buyer,[8] was formed. PO2 Payumo then prepared the necessary documents prior to the operation.[9]

From the police station, the lady confidential informant called petitioner by phone. The latter instructed her to wait on M. Mapa Street.[10] Thus, the buy-bust team proceeded to that area and arrived at around 4:20 p.m. of January 20, 2005.[11] PO2 Payumo and the lady confidential informant arrived together to wait for petitioner. The rest of the buy-bust team, who had gone to the area on board an L300 van,[12] took positions nearby. Petitioner came by five minutes later,[13] and, after asking the lady confidential informant whether PO2 Payumo was the buyer, instructed Payumo to follow him to his house where he told PO2 Payumo to wait. Two other individuals, later identified as Conchita Carlos and Jeonilo Flores, were also waiting for petitioner.[14]

Upon getting back, petitioner asked PO2 Payumo for the payment,[15] and the latter complied and handed the marked money consisting of three P50.00 bills all bearing the initials “TF”.[16] Petitioner then went into a room and returned with a plastic sachet containing white crystalline substance that he gave to PO2 Payumo. Receiving the plastic sachet, PO2 Payumo placed a missed call to PO1 Miguelito Gil, a member of the buy-bust team, thereby giving the pre-arranged signal showing that the transaction was completed. PO2 Payumo then arrested petitioner after identifying himself as an officer. PO2 Payumo recovered another sachet containing white crystalline substance from petitioner’s right hand, and the marked money from petitioner’s right front pocket.[17] The rest of the buy-bust team meanwhile came around and recovered two sachets also containing white crystalline substance from the sofa where Conchita and Jeonilo were sitting. The buy-bust team thus also arrested Conchita and Jeonilo.[18]

Back at the police station, PO2 Payumo placed on the plastic sachet that petitioner had handed him the marking “RRS-1” and on the other sachet recovered from petitioner’s right hand the marking “RRS-2.”[19] The seized items were thereafter turned over to the Western Police District Crime Laboratory for examination by P/Insp. Judycel Macapagal, who found the items positive for methamphetamine hydrochloride or shabu.[20]

On the other hand, petitioner denied that there had been a buy-bust operation, and claimed that he had been framed up.

Petitioner testified that he was at his house entertaining his visitors Conchita and Jeonilo in the afternoon of January 20, 2005;[21] that Conchita was selling to him a sofa bed for P800.00, while Jeonilo was only contracted by Conchita to drive the jeepney carrying the sofa bed;[22] that the three of them were surprised when a group of armed men in civilian clothes barged into his house and conducted a search, and arrested them; that he was also surprised to see a plastic sachet when the armed men emptied his pocket; that the plastic sachet did not belong to him;[23] that PO2 Payumo was not among those who entered and searched his house;[24] that the three of them were made to board a van where PO1 Rudolf Mijares demanded P30,000.00 for his release;[25] and that because he told them he had no money to give to them, one of the men remarked: Sige, tuluyan na yan; and that they were then brought to the police station.[26]

Jeonilo corroborated petitioner’s story.[27]

Ruling of the RTC

As stated, on May 23, 2006, the RTC found petitioner guilty beyond reasonable doubt, to wit:

Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies with respect to the operation

deserve full faith and credit.

However like alibi, we view the defense of frame up with disfavor as it can easily be concocted and is commonly used as a standard line of defense in most prosecution arising from violations of the Dangerous Drugs Acts.

Having established that a legitimate buy-bust operation occurred in the case at bar, there can now be no question as to the guilt of the accused-appellant. Such operation has been considered as an effective mode of apprehending drug pushers. If carried out with due regard to the constitutional and legal safeguards, it deserves judicial sanction.” (People of the Philippines vs. Lowell Saludes, et al., G.R. No. 144157, June 10, 2003)

The accused failed to show any ill motive on the part of the policeman to testify falsely against him. Indeed, the prosecution showed that the police were at the place of the incident to do exactly what they are supposed to do—to conduct an operation. The portrayal put forward by accused and his lone witness remained uncorroborated. Evidence to be believed must not only come from a credible witness but must in itself be credible.

The entrapment operation paved the way for the valid warrantless arrest of accused, Sec. 5(a) of Rule 113 of the Rules of Court provides thus:

“A police officer or private person, without warrant, may arrest a person:

(a) when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; xxx

“It has been held that the testimonies of police officers involved in a buy-bust operation deserve full faith and credit, given the presumption that they have performed their duties regularly. This presumption can be overturned if clear and convincing evidence is presented to prove either two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.” (People of the Philippines vs. Reynaldo Remarata et al., G.R. No. 147230, April 29, 2003)

The positive identification of appellants by the prosecution witness should prevail over the former’s denials of the commission of the crime for which they are charged, since greater weight is generally accorded to the positive testimony of the prosecution witness than the accused’s denial. Denial, like alibi, is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. (People of the Philippines vs. Edwin Belibet, Manny Banoy and Ronnie Rosero, G.R. No. 91260, July 25, 1991)[28]

The dispositive portion of the decision of the RTC reads:

WHEREFORE, judgment is hereby rendered as follows, to wit:

1. In Criminal Case No. 05-234564, finding accused, Rogelio Reyes y Samson, GUILTY beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay the fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.
2. In Criminal Case No. 05-234565, finding accused, Rogelio Reyes y Samson, GUILTY beyond reasonable doubt of the crime charged, he is hereby sentenced to suffer the indeterminate penalty of 12 years and 1 day as minimum to 17 years and 4 months as maximum; to pay a fine of P300,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.[29]

With his motion for reconsideration being denied by the RTC, petitioner filed his notice of appeal.[30]

Ruling of the CA

On appeal, the CA affirmed the findings of the RTC thuswise:

A fortiori, viewed in the light of the foregoing, We are strongly convinced that the prosecution has proven the guilt of the Appellant for the crimes charged beyond reasonable doubt.

WHEREFORE, premises considered, the instant Appeal is DENIED. The challenged Decision of the court a quo is hereby AFFIRMED in toto.

SO ORDERED.[31]

The CA gave more weight to the testimony of poseur buyer PO2 Payumo, and believed the findings of the laboratory examination conducted by P/Insp. Macapagal. It recognized the validity of the buy-bust operation.

Issue

Petitioner is now before the Court seeking to reverse the decision of the CA upon the sole error that:

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT FINDING WORTHY OF CREDENCE PETITIONER'S WITNESS TESTIMONY CREATING DOUBT ON THE GUILT OF THE PETITIONER OF THE CRIME CHARGED IN THE INFORMATION.

Petitioner wants the Court to give credence to his defense of frame-up, and to believe the testimony of Jeonilo Flores who had no reason to testify falsely against the arresting officers.

Ruling

The appeal is meritorious.

In this jurisdiction, we convict the accused only when his guilt is established beyond reasonable doubt. Conformably with this standard, we are mandated as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused.[32]

Guided by the standard, we acquit petitioner.

The buy-bust operation mounted against petitioner resulted from the tip of an unnamed lady confidential informant. Such an operation, according to *People v. Garcia*,[33] was "susceptible to police abuse, the most notorious of which is its use as a tool for extortion," and the possibility of that abuse was great.[34] The susceptibility to abuse of the operation led to the institution of several procedural safeguards by R.A. No. 9165, mainly to guide the law enforcers. Thus, the State must show a faithful compliance with such safeguards during the prosecution of every drug-related offense.[35]

The procedural safeguards start with the requirements prescribed by Section 21 of R.A. No. 9165 relating to the custody and disposition of the confiscated, seized, and surrendered dangerous drugs, plant sources of the dangerous drugs, controlled precursors and essential chemicals, instruments and paraphernalia, and laboratory equipment. The provision relevantly states:

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. – xxx:

(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; xxx (Emphasis supplied)

This appeal involves two distinct drug-related offenses, namely: illegal sale of dangerous drugs, and illegal possession of dangerous drugs. The successful prosecution of illegal sale of dangerous drugs requires: (a) proof that the transaction or sale took place, and (b) the presentation in court as evidence of the corpus delicti, or the dangerous drugs themselves. On the other hand, the prosecution of illegal possession of dangerous drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.[36] For both offenses, it is crucial that the Prosecution establishes the identity of the seized dangerous drugs in a way that the integrity thereof has been well preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. Nothing less than a faithful compliance with this duty is demanded of all law enforcers arresting drug pushers and drug possessors and confiscating and seizing the dangerous drugs and substances from them.

This duty of seeing to the integrity of the dangerous drugs and substances is discharged only when the arresting law enforcer ensures that the chain of custody is unbroken. This has been the reason for defining chain of custody under Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002, viz:

(b) “Chain of custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer or custody were made in the course of safekeeping and used in court as evidence, and the final disposition; (Emphasis supplied)

In *Mallilin v. People*,^[37] the need to maintain an unbroken chain of custody is emphasized:

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 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. 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.

Cogently, *Mallilin v. People* is reiterated in *Catuiran v. People*,^[38] *People v. Garcia*,^[39] and *People v.*

Villanueva,[40] among others.

Here, the Prosecution failed to demonstrate a faithful compliance by the arresting lawmen of the rule on chain of custody. To start with, the fact that the dangerous drugs were inventoried and photographed at the site of arrest upon seizure in the presence of petitioner, a representative of the media, a representative of the Department of Justice (DOJ), and any elected public official, was not shown. As such, the arresting lawmen did not at all comply with the further requirement to have the attending representative of the media, representative of the DOJ, and elected public official sign the inventory and be furnished a copy each of the inventory. Instead, the records show that PO2 Payumo placed the markings of “RRS-1” on the sachet allegedly received from petitioner and “RRS-2” on the two sachets allegedly seized from petitioner’s hand already at the police station with only petitioner present. Yet, the Prosecution did not also present any witness to establish that an inventory of the seized articles at least signed by petitioner at that point was prepared.

We clarified in *People v. Sanchez*[41] that in compliance with Section 21 of R.A. No. 9165, supra, the physical inventory and photographing of the seized articles should be conducted, if practicable, at the place of seizure or confiscation in cases of warrantless seizure. But that was true only if there were indications that petitioner tried to escape or resisted arrest, which might provide the reason why the arresting team was not able to do the inventory or photographing at petitioner’s house; otherwise, the physical inventory and photographing must always be immediately executed at the place of seizure or confiscation.

In *People v. Pringas*,[42] the non-compliance by the buy-bust team with Section 21, supra, was held not to be fatal for as long as there was justifiable ground for it, and for as long as the integrity and the evidentiary value of the confiscated or seized articles were properly preserved by the apprehending officer or team. The Court further pronounced therein that such non-compliance would not render an accused’s arrest illegal or the items seized or confiscated from him inadmissible, for what was of utmost importance was the preservation of the integrity and the evidentiary value of the seized or confiscated articles, considering that they were to be utilized in the determination of the guilt or innocence of the accused.

However, the omissions noted herein indicated that the State did not establish the identity of the dangerous drugs allegedly seized from petitioner with the same exacting certitude required for a finding of guilt.

To be sure, the buy-bust operation was infected by lapses. Although PO2 Payumo declared that he was the one who had received the sachet of shabu (“RRS-1”) from petitioner and who had confiscated the two sachets of shabu (“RRS-2”) from petitioner, all of which he had then sealed, nothing more to support the fact that the evidence thus seized had remained intact was adduced. In fact, the State did not anymore establish to whom the seized articles had been endorsed after PO2 Payumo had placed the markings at the station, and with whose custody or safekeeping the seized articles had remained until their endorsement to P/Insp. Macapagal for the laboratory examination. Presently, we cannot justifiably presume that the seized articles had remained in the possession of PO2 Payumo in view of the testimony of P/Insp. Macapagal to the effect that the party requesting the laboratory examination had been a certain Police Officer Alano,[43] whom the Prosecution did not at all particularly identify or present as its witness. In this regard, Laboratory Report No. D-085-05,[44] the report prepared by P/Insp. Macapagal, also stated that the party requesting the conduct of the laboratory examination was the “OIC-SAID-SOTU, PS-8, Western Police District.” Also, the Prosecution did not show to whom the seized articles had been turned over following the conduct of the laboratory examination, and how the seized articles had been kept in a manner that preserved their integrity until their final presentation in court as evidence of the corpus delicti. Such lapses of the Prosecution were fatal to its proof of guilt because they demonstrated that the chain of custody did not stay unbroken, thereby raising doubt on the integrity and identity of the dangerous drugs as evidence of the corpus delicti of the crimes charged.

We are then not surprised to detect other grounds for skepticism about the evidence of guilt.

Firstly, PO2 Payumo testified that the lady confidential informant had gone to Police Station 8 to report the alleged drug-selling activities of petitioner for the first time in the morning of January 20, 2005. That report led to the forming of the buy-bust team,[45] for purposes of which he prepared the pre-operation documents. His veracity was suspect, however, considering that his so-called Pre-Operation/Coordination Sheet appeared to have been prepared on the day before, as its date “January 19, 2005” disclosed.[46] The date of January 19, 2005 also appeared in the Certification of Coordination issued by the Philippine Drug Enforcement Agency in reference to the buy-bust operation against petitioner.[47] Considering that the Prosecution did not explain the discrepancy, the impression is unavoidable that the buy-bust operation was already set in motion even before the lady informant actually made her report against petitioner. Thereby, his defense of frame-up was bolstered.

Secondly, the Pre-Operation/Coordination Sheet indicated that there were ten members “and three (3) others” that comprised the buy-bust team.[48] Yet, the Joint Affidavit submitted by the members of the buy-bust team was executed and signed by only six officers (excluding even poseur buyer PO2 Payumo himself), namely: PO1 Mijares, PO1 Mark Dave Vicente, PO1 Maurison Ablaza, PO1 Elmer Clemente and PO1 Gil.[49] The Prosecution’s failure to explain why only six members of the buy-bust team actually executed and signed the Joint Affidavit might indicate that the incrimination of petitioner through the buy-bust operation was probably not reliable.

And, thirdly, both the Pre-Operation/Coordination Sheet and the Certification of Coordination revealed that the confidential information received involved two suspects of illegal drug trade in Bacood, Sta. Mesa known as alias Boy and alias Totoy Tinga. PO2 Payumo recalled, however, that the lady confidential informant had tipped the police off only about alias Boy. It seems from such selectiveness that PO2 Payumo deliberately omitted the other target and zeroed in only on alias Boy (petitioner), which might suggest that PO2 Payumo was not as reliable as a poseur buyer-witness as he presented himself to be.

Conviction must stand on the strength of the Prosecution’s evidence, not on the weakness of the defense the accused put up.[50] Evidence proving the guilt of the accused must always be beyond reasonable doubt. If the evidence of guilt falls short of this requirement, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course.

WHEREFORE, the Court REVERSES and SETS ASIDE the decision promulgated on September 28, 2007 by the Court of Appeals; and ACQUITS accused ROGELIO S. REYES of the crimes charged in Criminal Case No. 05-234564 and Criminal Case No. 05-234565.

The Court DIRECTS the Director of the Bureau of Corrections in Muntinlupa City to release ROGELIO S. REYES from custody unless he is detained thereat for another lawful cause; and to report on his compliance herewith within five days from receipt.

No pronouncements on costs of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-De Castro, Del Castillo, and Villarama, Jr., JJ., concur.

[1] CA Rollo, pp. 13-28; penned by Associate Justice Myrna Dimaranan-Vidal (retired), with Associate Justice Jose C. Reyes, Jr. and Associate Justice Japar B. Dimaampao concurring.

[2] Records, pp. 104-113.

- [3] Id., pp. 2-5.
- [4] Id., pp. 2-3.
- [5] Id., pp. 4-5.
- [6] TSN dated September 7, 2005, p. 11.
- [7] Id., p. 10.
- [8] Id., p. 4.
- [9] Id., pp. 5 and 12.
- [10] Id., p. 13.
- [11] Id., p. 14.
- [12] TSN dated August 31, 2005, p. 4.
- [13] TSN dated September 7, 2005, p. 14.
- [14] Id., pp. 15-17.
- [15] Id., p. 17.
- [16] Id., pp. 8-9.
- [17] Id., pp. 18-20.
- [18] TSN dated August 31, 2005, pp. 8-10.
- [19] TSN dated September 7, 2005, pp. 22-24.
- [20] TSN dated August 24, 2005, pp. 3-5.
- [21] TSN dated September 28, 2005, p. 4.
- [22] Id., p. 5.
- [23] Id., pp. 6-7.
- [24] Id., p. 8.
- [25] Id., pp. 8-9.
- [26] Id., pp. 9-10.
- [27] TSN dated May 3, 2006, pp. 3-5.
- [28] Records, pp. 111-113.
- [29] Id., p. 113.
- [30] CA Rollo, pp. 28-29.
- [31] Id., p. 136.
- [32] *People v. Feliciano*, G.R. Nos. 127759-60, September 24, 2001, 365 SCRA 613, 629; *People v. Quimzon*, G.R. No. 133541, April 14, 2004, 427 SCRA 261, 281; *People v. Cula*, G.R. No. 133146, March 28, 2000, 329

SCRA 101, 116.

[33] G.R. No. 173480, February 25, 2009, 580 SCRA 259.

[34] *Id.*, at p. 267, citing *People v. Tan*, G.R. No. 133001, December 14, 2000, 348 SCRA 116.

[35] *Id.*

[36] *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 339; *People v. Desuyo*, G.R. No. 186466, July 26, 2010, 625 SCRA 590, 603-604; *People v. Darisan*, G.R. No. 176151, January 30, 2009, 577 SCRA 486.

[37] G.R. No. 172953, April 30, 2008, 553 SCRA 619.

[38] G.R. No. 175647, May 8, 2009, 587 SCRA 567

[39] *Supra*, note 33.

[40] G.R. No. 189844, November 15, 2010, 634 SCRA 743.

[41] G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[42] G.R. No. 175928, August 31, 2007, 531 SCRA 828.

[43] TSN dated August 24, 2005, p. 3.

[44] *Records*, p. 16.

[45] TSN dated September 7, 2005, pp. 11-12.

[46] *Records*, p. 20.

[47] *Id.*, p. 22.

[48] *Supra*, at note 46.

[49] *Records*, p. 14 (Exhibits “D” and “D-1”).

[50] *People v. Obeso*, G.R. No. 152285, October 24, 2003, 414 SCRA 447, 460; *People v. Decillo*, G.R. No. 121408, October 2, 2000, 341 SCRA 591, 598-599.

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