

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SEVILLANO DELOS REYES Y LANTICAN, APPELLANT.

G.R. No. 181039. January 31, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

The instant appeal assails the Decision [1] dated August 9, 2007 of the Court of Appeals (CA) in CA-G.R. CR HC No. 02038 which affirmed with modification the February 27, 2006 Decision [2] of the Regional Trial Court (RTC), Branch 36, of Calamba City finding appellant Sevillano delos Reyes guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

On January 22, 2003, two separate informations were filed against appellant charging him as follows:

Criminal Case No. 10733-2003-C

That on or about October 16, 2002 at Sitio Tagpuan, Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named not being licensed or authorized by law did then and there willfully, unlawfully and feloniously sell, dispense, deliver and distribute to a poseur buyer one (1) folded aluminum foil strip containing Methamphetamine Hydrochloride having a total weight of 0.04 grams, a dangerous drug.

CONTRARY TO LAW. [3]

Criminal Case No. 10734-2003-C

That on or about October 16, 2002 at Sitio Tagpuan, Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above named not being licensed or authorized by law did then and there willfully, unlawfully and feloniously possess five (5) folded aluminum foil strips containing Methamphetamine Hydrochloride having a total weight of 0.80 grams, a dangerous drug.

CONTRARY TO LAW. [4]

When arraigned, appellant pleaded not guilty to both charges. [5] During pre-trial, the prosecution and the defense stipulated on the following facts:

- that accused Sevillano delos Reyes was the person charged in the Information and arraigned before this Court; and,
- that accused was arrested at about 12:30 p.m. of October 16, 2002 at Sitio Tagpuan, Bayog, Los Baños, Laguna. [6]

In the ensuing trial, the prosecution offered the testimony of three prosecution witnesses: PO2 Joseph Ortega, who was a member of the buy-bust team, P/Insp. Donna Villa P. Huelgas, the forensic chemist who tested the crystalline substance contained in the strip of aluminum foil allegedly confiscated from the appellant, and PO2

Gandergem E. Cabaluna, who delivered the Request for Drug Examination and the six pieces of folded strips of aluminum foil allegedly seized from the appellant to the Crime Laboratory in Camp Vicente Lim, Calamba City, Laguna. The testimonies of P/Insp. Huelgas and PO2 Cabaluna, however, were dispensed with as the matters they were supposed to testify on were admitted by the defense.

Thus, the prosecution's case was established primarily from the testimony of PO2 Ortega and the facts stipulated upon by both parties. The prosecution presented the following antecedents.

On October 16, 2002, the Los Baños Police Station, through SPO1 Camilo Palisoc, received a tip from an informant that appellant was selling shabu. Thus, Los Baños Police Chief Police Senior Inspector Raymond Perlado instructed PO2 Ortega and SPO1 Palisoc to conduct a buy-bust operation. P/Sr. Insp. Perlado gave them two fifty-peso bills to be used as marked money.

On even date, around 12:00 noon, PO2 Ortega, SPO1 Palisoc and SPO2 Herminigildo Dino proceeded to appellant's house at Sitio Tagpuan, Barangay Bayog, Los Baños, Laguna to execute the planned buy-bust operation.

Upon reaching the place, PO2 Ortega and SPO2 Dino positioned themselves near a fence six meters behind appellant's house. SPO1 Palisoc, the designated poseur-buyer, on the other hand, proceeded to enter appellant's house. A few minutes later, appellant and SPO1 Palisoc came out of the house. SPO1 Palisoc then handed over the marked money to appellant while the latter in return gave him an aluminum foil containing white crystalline substance.

As pre-arranged signal, SPO1 Palisoc held the hands of appellant. PO2 Ortega and SPO2 Dino thereafter approached the two and introduced themselves as police officers. SPO1 Palisoc recovered the marked money. With the assistance of barangay officials, they entered appellant's house and recovered five plastic sachets of shabu on top of the bed. Thereafter, appellant was brought to the police station where he was detained. As to the seized folded strips of aluminum foil containing white crystalline substance, SPO1 Palisoc marked the one subject of the transaction with "SLD" while PO2 Ortega marked those recovered inside the house with "SLD 1," "SLD 2," "SLD 3," "SLD 4," and "SLD 5." The specimens were then turned over to PO2 Cabaluna who submitted the same for testing to the Philippine National Police Crime Laboratory Service 4 located in Camp Vicente Lim, Calamba City.

In the chemistry examination conducted by P/Insp. Huelgas, a forensic chemist, the white crystalline substance contained in the folded strips of aluminum foil tested positive for the presence of methamphetamine hydrochloride or shabu. P/Insp. Huelgas prepared Chemistry Report No. D-2386-02 [7] to document the results of the examination.

The defense, for its part, presented three witnesses, appellant, Iluminada delos Reyes and Rizza Estevez, whose testimonies presented the following version of the facts:

In the morning of October 16, 2002, Iluminada Reyes (Iluminada), appellant's mother, left for their farm while appellant was sleeping soundly in their house. Appellant was then still asleep as he worked the night shift in a factory.

Around 12:30 in the afternoon, Rizza Estevez, Iluminada's sister-in-law, who lives eight meters away, saw PO2 Ortega kick open the door of appellant's house.

Appellant was not awakened by this but was awakened only when his shoulder blade was hit with a .45 caliber pistol by a certain "Magie," a civilian agent. When he woke up, he saw that two police officers, PO2 Ortega and

SPO1 Palisoc, were also in his house. They were looking for marked money but failed to find any so they searched the entire room of his house, took appellant's Nokia 3310 cellular phone and P20,000 cash hidden under his pillow. Thereafter, the three called a barangay official to accompany them on the way to the police station. On the way out of the house, appellant saw that their door was broken.

When Iluminada arrived home, she found their door broken. She asked around and was informed by her cousin, Erlinda delos Reyes, that the police barged into their house and arrested her son.

On February 27, 2006, the RTC rendered judgment acquitting appellant in Criminal Case No. 10734-2003-C (illegal possession of dangerous drugs) but finding him guilty as charged in Criminal Case No. 10733-2003-C (illegal sale of dangerous drugs). The fallo of the trial court's decision reads:

WHEREFORE, in Crim. Case No. 10733-2003-C, the Court finds Accused SEVILLANO DE LOS REYES GUILTY. The accused is sentenced to Reclusion Perpetua and pay the fine of P500,000.00[.]

In Crim. Case No. 10734-2003-C, the Court finds Accused SEVILLANO DE LOS REYES not GUILTY for the failure of the prosecution to prove his guilt beyond reasonable doubt.

The Branch Clerk of Court shall, in accordance with law, forward the seized "shabu" in these cases to the Philippine Drug Enforcement Agency for destruction. [8]

In convicting appellant, the trial court held that with the testimony of PO2 Ortega and the facts stipulated upon by the parties, the prosecution was able to establish the corpus delicti.

Appellant in his brief before the CA alleged that:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONY OF THE LONE PROSECUTION EYEWITNESS WHILE TOTALLY DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT. [9]

Appellant argued that PO2 Ortega's testimony was not corroborated by anybody since the other two witnesses for the prosecution, P/Insp. Huelgas and PO2 Cabaluna, were not part of the buy-bust team. Further, it was erroneous for the trial court to convict him of illegal sale of drugs when the alleged poseur-buyer was never presented to testify in court. And even assuming for the sake of argument that there was a buy-bust operation, the buy-bust team did not comply with the mandatory requirements of R.A. No. 9165 rendering void the seizure of the items submitted as evidence.

The Office of the Solicitor General (OSG), on the other hand, argued that the clear and convincing testimony of PO2 Ortega necessarily prevails over appellant's bare denial. It pointed out that the trial court's factual findings are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. Moreover, there is no rule requiring that a testimony has to be corroborated to be adjudged credible since witnesses are weighed and not numbered. Lastly, the OSG argued the implementing rules and regulations of R.A. No. 9165 were not yet in effect at the time appellant was arrested.

On August 9, 2007, the CA rendered a decision affirming with modification the RTC decision and disposing as follows:

WHEREFORE, premises considered, the appealed decision, dated February 27, 2006, of the Regional Trial Court, Branch 36, Calamba City, Laguna, in Criminal Case No. 10733-2003-C is hereby AFFIRMED with MODIFICATION. Accused-appellant Sevillano delos Reyes y Lantican is hereby sentenced to suffer the penalty of life imprisonment instead of reclusion perpetua. The appealed decision is affirmed in all other respects.

SO ORDERED. [10]

The CA held that the non-presentation of the poseur-buyer is not fatal to the establishment of appellant's guilt since there was an eyewitness to the illicit transaction in the person of PO2 Ortega, a member of the buy-bust team who positively identified appellant as the perpetrator of the illegal sale. The CA further ruled that the examination conducted by the forensic chemist on the contents of the folded strips of aluminum foil showed that they contained methamphetamine hydrochloride or shabu. Lastly, the appellate court also applied the doctrine of presumption of regularity in the performance of official duties. It held that as there was no evidence that PO2 Ortega was impelled by improper motive in testifying against appellant or that he deviated from the regular performance of his duties.

On February 27, 2008, the Court directed the parties to file their respective supplemental briefs if they desire. [11] The Office of the Solicitor General manifested that it is dispensing with the filing of a supplemental brief as the same would constitute a mere rehash or reiteration of matters already presented in its brief and duly considered by the CA. [12]

Appellant, for his part, submitted a Supplemental Brief, [13] contending that PO2 Ortega's testimony failed to provide substantial information as to warrant the non-presentation of the poseur-buyer. Appellant stresses that PO2 Ortega was six meters away from the poseur-buyer and appellant when the alleged transaction took place. Thus, he could not have clearly seen what was handed by appellant. Likewise, there remains no proof that the item handed to the poseur-buyer was the very same item examined by the forensic chemist. The stipulation on the chemist's testimony should not be taken against appellant since it only refers to the fact that the seized items yielded positive results for shabu and does not in any way extend to the matter of ownership thereof. Appellant likewise argues that the police officers deviated from the regular performance of their duties as his arrest was tainted with irregularity. He points to the destruction of the door of his house and more importantly, the buy-bust-team's failure to follow the mandatory requirements of R.A. No. 9165 which consequently resulted in the prosecution's failure to present the corpus delicti of the crime.

The appeal is meritorious.

In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the corpus delicti, i.e., the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction. [14]

Considering the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise, there is a need to strictly comply with procedure in its seizure and custody. [15] Section 21, paragraph 1, Article II of R.A. No. 9165, provides such procedure:

(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[.]

Evident however from the records of the case is the fact that the members of the buy-bust team did not comply with the procedure laid down in Section 21 of R.A. No. 9165. As testified to by PO2 Ortega concerning the facts relating to the seizure and custody of the evidence:

Q

The aluminum foil that was handed to Palisoc during the conduct of the buy bust, what was done with it?

A

We also turned it over to the investigator and it was turned over later on to the PCCL, sir.

x x x x

Q

And you also said that Palisoc turned over the methamphetamine hydrochloride, the aluminum foil containing shabu that was bought [from] [D]elos Reyes, if it will be shown to you, would you be able to identify the same?

A

Yes, sir.

Q

And kindly go over this piece of evidence that was marked as Exhibit D and tell us?

A

This is the one, sir (again witness identified the aluminum foil inside the small plastic sachet with markings)

Q

There is a marking on this piece of evidence on the aluminum foil itself marked as SLD, do you know who placed th[ose] markings on that aluminum foil?

A

SPO1 Palisoc, sir.

Q

Why do you know that he was the one who placed the markings?

A

I was present when he placed those markings, sir.

x x x x

Q

So, after these turned over to -I withdraw. You said that were found positive for the presence of methamphetamine hydrochloride the contents of this aluminum foil, so how do you know how these pieces of evidence were transmitted to the Crime Laboratory?

A

We sent a request to the PCCL which was received by the PCCL and we returned to the PCCL to get the result, sir.

Q

If that request will be shown to you, would you be able to identify the same?

A

Yes, sir.

Q

Kindly go over this Exhibit D and tell us if you could recognize that document?

A

Yes sir, this is the one (witness identified Exhibit A)

Q

Who in particular transmitted that to the Crime Laboratory?

A

PO2 Cabaluna, sir.

Q

And who is this PO2 Cabaluna?

A

Our Police Investigator, sir.[16]

Although there were elected public officials from the barangay who were present during the buy-bust operation, nothing in his testimony, nor in the facts stipulated by the parties shows that there was physical inventory of the seized items or that there was photographing thereof in the presence of appellant, his representative or counsel, a representative of media and the Department of Justice, as required by Section 21 of R.A. No. 9165.

Of course, *People v. Pringas* [17] teaches that non-compliance by the apprehending/buy-bust team with Section 21 is not fatal. Mere failure to comply with Section 21 will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. But what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. [18] This function in buy-bust operations is performed by the chain of custody requirement which ensures that doubts concerning the identity of the evidence are removed. Hence, in a long line of cases, we have considered it fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused. [19] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "chain of custody" as follows:

"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 of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] [20]

While this regulation took effect on October 18, 2002 (or 2 days after the alleged commission of the crime charged), it is however useful in determining if the integrity of the evidence was preserved in the instant case.

Here, the first link in the chain of custody starts with SPO1 Palisoc, the designated poseur-buyer, to whom appellant allegedly handed over the shabu contained in an aluminum foil. The second link is when SPO1 Palisoc marked the aluminum foil with "SLD," then turned them over to PO2 Cabaluna.

The third link is when PO2 Cabaluna delivered the specimen to the PNP Crime Laboratory Service 4, together with a request for examination signed by P/Sr. Insp. Perlado. Records show and parties stipulated that it was received by one PO1 Golfo, Jr. at the crime laboratory.

The continuity of the chain, however, becomes unclear after the evidence reached the hands of PO1 Golfo, Jr. as the next part of the chain established by the prosecution already relates to the examination conducted by P/Insp. Huelgas, the forensic chemist. The records are bereft of any proof from whom P/Insp. Huelgas received the specimen she examined and where it was kept for safekeeping after the examination was conducted up to the time it was presented in court.

Said gaps in the chain cannot be disregarded or overlooked by this Court. As held in the case of *People v. Almorfe* [21]:

x x x Although Janet identified Exhibits "C-1," "C-2" and "C-3" as the drugs seized from appellants which she claimed to have marked immediately after the bust, she did not disclose the name of the investigator to whom she turned them over. And there is no showing if that same investigator was the one who turned the drugs over to the forensic chemist, or if the forensic chemist whose name appears in the physical science report was the one who received them from that investigator, or where the drugs were kept for safekeeping after the chemical test was conducted up to the time they were presented in court.

It bears recalling that while the parties stipulated on the existence of the sachets, they did not stipulate with respect to their "source."

People v. Sanchez teaches that the testimony of the forensic chemist which is stipulated upon merely covers the handling of the specimen at the forensic laboratory and the result of the examination, but not the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession. (Underscoring in the original omitted; emphasis supplied.)

With crucial portions of the chain of custody not clearly accounted for, reasonable doubt is created as to the origins of the shabu presented in court. Lingering doubt exists whether the specimen seized from appellant was the specimen brought to the crime laboratory and eventually offered in court as evidence.

The presumption of regularity in the performance of official duties cannot be availed of in this case to supply the missing links as the presumption is effectively negated by to the buy-bust team's failure to comply with Section 21 of R.A. No. 9165 and to show that the integrity of the corpus delicti has been preserved. As a general rule, the testimonies of the police officers who apprehended the accused are accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with failure to comply with the procedure and guidelines prescribed, the presumption is effectively destroyed. [22]

For failure of the prosecution to prove the guilt of appellant beyond reasonable doubt, acquittal is in order.

WHEREFORE, the Decision dated August 9, 2007 of the Court of Appeals in CA-G.R. CR HC No. 02038 is REVERSED and SET ASIDE. Appellant SEVILLANO DELOS REYES y LANTICAN is ACQUITTED of the crime charged in Criminal Case No. 10733-2003-C and ordered immediately RELEASED from detention, unless he is confined for any other lawful cause/s.

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.

With costs de oficio.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Sereno, JJ., concur.

[1] Rollo, pp. 2-9. Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag concurring.

[2] Records, pp. 106-115. Penned by Judge Medel Arnaldo B. Belen.

[3] Id. at 17.

[4] RTC Decision, id. at 106-107. As noted by the CA, the information for Criminal Case No. 10734-03-C was not attached to the records.

[5] Id. at 21.

[6] Id. at 25.

[7] Id. at 12.

[8] Id. at 115.

[9] CA rollo, p. 41.

[10] Rollo, p. 8.

[11] Id. at 13.

[12] Id. at 14.

[13] Id. at 18-23.

[14] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, p. 7, citing *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266; and *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

[15] *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 304-305.

[16] TSN, January 27, 2004, pp. 15-18.

[17] G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842.

[18] Id. at 842-843.

[19] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 213. Citations omitted.

[20] See *People v. Denoman*, *supra* note 14 at 271.

[21] G.R. No. 181831, March 29, 2010, 617 SCRA 52, 61.

[22] *People v. De Guzman*, G.R. No. 186498, March 26, 2010, 616 SCRA 652, 669.

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