

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODNIE ALMORFE Y SEDENTE AND RYAN ALMORFE Y ALLESTER, APPELLANTS.

G.R. No. 181831. March 29, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Appellants Rodnie Almorfe y Sedente (Rodnie) and Ryan Almorfe y Vallester (Ryan) were convicted of violation of Section 5, Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act) by the Regional Trial Court of Pasig, Branch 70. Appellant Rodnie was further convicted of violation of Section 11 of the same law.

The Information against appellants for violation of Section 5 (Crim. Case No. 13116-D) reads:[1]

x x x x

On or about November 27, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Janet Sabo y Ampuhan, a police poseur-buyer, one (1) heat sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of said law.

x x x x

The Information against appellant Rodnie for violation of Section 11 of the same law (Crim. Case No. 13117-D) reads:[2]

x x x x

On or about November 27, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control two (2) heat-sealed transparent plastic sachet containing two (2) centigrams (0.02 gram) each, of white crystalline substance, which were found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of said law.

x x x x

Culled from the records of the case is the following version of the prosecution:

At about 7:00 o'clock in the evening of November 27, 2003, an informant personally reported to the Pasig Police Station about the rampant selling of "shabu" in Callejon 64, Purok 6, Villa Antonio, Brgy. Bambang, Pasig by a certain "Taga," prompting a team belonging to the Mayor's Special Action Team of Pasig City to conduct a buy-bust operation at the target area.

The team was composed of PO1 Aldrin Mariano, PO1 Roland Panis, PO2 San Andres, PO3 Salisa and PO1 Janet

Sabo (Janet).

Together with the informant, the team members, in coordination with the Philippine Drug Enforcement Agency, repaired to and arrived at the target area at around 8:30 p.m. of the same day, November 27, 2003. After the service vehicle bearing the team members parked "along Akasya St., in a vacant lot,"[3] a "lengthy street [with many alleys intersecting it],"[4] Janet, together with the informant, at once proceeded to the target address about 50 meters away, leaving behind the other team members inside the vehicle.

On reaching the target address, the informant nodded at one of two men standing in front thereof who turned out to be Rodnie a.k.a. "Taga". Rodnie at once asked the informant what their purpose was, to which the informant replied "Iiskor kami." Rodnie then asked "Magkano?," and the informant answered "Dos, pare" which means P200 in the drug trade.

Janet, who was designated as poseur-buyer, gave the pre-marked P200 (in five P20 and two P50 bills) to Rodnie who placed them inside his pocket. Rodnie thereupon took out a "black plastic container"[5] from his pant's back pocket from which container he drew two plastic sachets which he, however, returned to the container.

Rodnie thereafter parted with some of the money bills to his companion who turned out to be his co-appellant Ryan, whom he asked "Akina yung binigay ko sa yo kanina." Ryan at once gave Rodnie a sachet of shabu which Rodnie in turn gave to Janet. At that instant, Janet executed the pre-arranged signal to the other members of the team who swooped down on appellants and arrested them. Janet then and there seized the money and the two plastic sachets inside the black plastic container in Rodnie's possession, and affixed her signature thereon, as well as on the plastic sachet subject of the sale.

The contents of the three sachets were found positive for methylamphetamine hydrochloride by the Eastern Police District Crime Laboratory Office,[6] hence, the indictment of appellants.

During the pre-trial, the parties stipulated on, inter alia, the "existence but not the source" of the three plastic sachets; and the due execution and genuineness of the result of the examination of the specimens to thus dispense with the testimony of the Forensic Chemist P/Insp. Lourdeliza Gural-Cejas[7] who examined and found the contents of the sachets to be positive for "methylamphetamine hydrochloride." [8]

Upon the other hand, appellants gave the following version:

On November 27, 2003, as he was assisting his wife who was about to give birth, Rodnie saw his cousin Ryan being pushed by Janet and four other companions towards his house. Once inside the house, Janet frisked Ryan and Rodnie. The members of the team soon took money inside Rodnie's pocket and searched his house which yielded nothing. Appellants were, however, handcuffed and brought to the police station.[9]

Appellants' neighbor, Aida Soriano (Aida), corroborated appellants' version.[10]

By Decision of July 29, 2005,[11] Branch 70 of the Regional Trial Court of Pasig convicted both appellants in the first case and appellant Rodnie in the second case, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 13116-D filed against Rodnie Almorfe and Ryan Almorfe for violation of Section 5, Article II, Republic Act 9165 (Illegal Sale of Shabu), they are hereby sentenced to LIFE IMPRISONMENT and to solidarily pay a Fine of Five Hundred Thousand Pesos (P500,000.00).

In Criminal Case No. 13117-D filed only against Rodnie Almorfe for violation of Section 11, Article II, Republic Act 9165 (Illegal Possession of Shabu), said accused is hereby sentenced to Twelve (12) Years and One (1) Day to Twenty (20) Years and to pay a Fine of Three Hundred Thousand Pesos (P300,000.00).

(underscoring supplied)

On appeal, the appellate court, by Decision of August 30, 2007,[12] affirmed that of the trial court's. It discredited appellants' claim of frame-up in the absence of proof of ill-motive on the part of the arresting officers to falsely accuse them, aside from the fact that the officers are presumed to have regularly performed their official duty.

The appellate court discredited too the testimony of Aida which it found to be laced with several inconsistencies vis-à-vis those of appellants'.

Hence, the present appeal, appellants assigning as sole error of the appellate court their conviction despite the failure of the prosecution "to prove that the shabu submitted for laboratory examination is the same one allegedly taken from them.

Section 21 of R.A. No. 9165 charts the procedure on the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, given the severity of the penalties imposed for violations of said law, viz:

Custody and Disposition of Confiscated, Seized, and/or Surrendered 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;

During the cross-examination of Janet, appellants' counsel elicited the following testimony:[13]

Q:

Now, madam witness, these two (2) accused were being charged of violating Section 5 and Section 11, of Republic Act 9165. And it is presumed that you know R.A. 9165?

A:

Section 5 is the only case we filed against them, sir.

Q:

During the inventory, did you secure the presence of the media team?

A:

We did not conduct an inventory, sir.

Q:

You did not conduct an inventory with regard to this case?

A:

We just marked the sachets right then and there for purposes of not alternating the sachets we recovered from them, sir.

[Defense counsel]

Atty. Sorongon:

But the law provides, your Honor, that it should be inventoried.

COURT:

Let the Court decide on that matter. You have already established that there was no inventory.

x x x x (italics and underscoring supplied)

Oddly, from the above-quoted testimony of alleged poseur buyer Janet, she clarified that they filed a case against appellants only for violation of Section 5 of R.A. No. 9165. Appellant Rodnie was, however, additionally indicted for violation of Section 11.

Respecting the team's non-compliance with the inventory, not to mention the photograph, requirement of R.A. No. 9165, the same does not necessarily render void and invalid the seizure of the dangerous drugs. There must, however, be justifiable grounds to warrant exception therefrom, and provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/s.[14]

For the saving clause to apply, it is important that the prosecution should explain the reasons behind the procedural lapses[15] and that the integrity and value of the seized evidence had been preserved:

x x x [N]on-compliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have lapses, as in the present case. These lapses, however, must be recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved. [16] (italics in the original)

The presentation of the drugs which constitute the corpus delicti of the offenses,[17] calls for the necessity of proving beyond doubt that they are the same seized objects. This function is performed by the "chain of custody" requirement as defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[18] which requirement is necessary to erase all doubts as to the identity of the seized drugs by establishing its movement from the accused, to the police, to the forensic chemist, and finally to the court.[19]

In the present case, even if the requirement to conduct an inventory were to be excused, given that there were only three sachets confiscated, the prosecution just the same failed to discharge its burden. 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[20] 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[21] 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.

While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange.[22] Hence, every link must be accounted for.

In fine, the prosecution failed to account for every link of the chain starting from its turn over by Janet to the investigator, and from the latter to the chemist.

As for the presumption of regularity in the performance of official duty relied upon by the courts a quo, the same cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.[23]

Parenthetically, the following testimony of Janet raises a nagging doubt regarding the buy-bust version of the prosecution:

Q:

So, you were fifty (50) meters away from your companions, where did you meet the accused?

A:

We entered Callejon 64, and they were standing by in front of their house where there was a lighted post, sir.

Q:

Madam witness, you stated that you entered Callejon 64, which is an alley, and you left your vehicle fifty (50) meters away from Callejon 64. Was your vehicle parked perpendicularly to Callejon 64 or, was it parked parallel to Callejon 64?

A:

We parked in one of those alleys named Akasya, when you make a turn, there was a creek. And after that, there were several other alleys, and there is a two-way street and then after that, there were alleys again, sir.

Q:

From the place where you parked your service vehicle, you have to enter into different streets before arriving at the house of the accused, am I correct?

A:

Yes, sir, when we parked, we walked straight, and when we reached the street, we walked again. After that, was an alley, Callejon 64, sir.

Q:

Will you agree with me, madam witness, that you have to turn from one street to another before arriving at Callejon 64? You testified that awhile ago, will you agree with me?

A:

Yes, sir.

Q:

Then, you stated during the direct examination, madam witness, that before you alighted from your vehicle, there is this agreement of the pre-arranged signal?

A:

Yes, sir.[24] (underscoring supplied)

Given Janet's description of the target address and the location of her fellow team members, how could the latter

have seen Janet execute the pre-arranged signal to draw them to close in and arrest appellants?

Just as the lack of showing whether the team confiscated the black container allegedly brought out by Rodnie containing two sachets raises a nagging doubt. If it did, why was it not presented? If it did not, why? That was an object evidence which could have lent credibility to the prosecution's version.

WHEREFORE, the August 30, 2007 Decision of the Court of Appeals in CA G.R. H.C. No. 02178 is REVERSED and SET ASIDE for failure of the prosecution to prove beyond reasonable doubt the guilt of appellants Rodnie Almorfe y Sedente and Ryan Almorfe y Vallester who are accordingly hereby ACQUITTED of the crimes charged against them and ordered immediately RELEASED from custody, unless they are being held for some other lawful cause.

The Director of the Bureau of Corrections is ORDERED to forthwith implement this decision and to INFORM this Court, within five days from receipt hereof, of the action taken.

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

SO ORDERED.

Leonardo-De Castro, Peralta, [**] Bersamin, and Abad, [***] JJ. , concur.

[*] Per Special Order No. 828 dated March 16, 2010.

[**] Additional member per Special Order No. 825 dated March 3, 2010.

[***] Additional member per Special Order No. 829 dated March 16, 2010.

[1] Records, p. 1.

[2] Id. at 12.

[3] TSN, June 22, 2004, p. 17.

[4] Ibid.

[5] Id. at 21.

[6] Records, p. 11.

[7] Id. at 23.

[8] Id. at 47.

[9] TSN, August 24, 2004, pp. 1-11.

[10] TSN, June 14, 2005, pp. 1-8.

[11] Records, p. 87.

[12] Penned by Justice Hakim S. Abdulwahid, with the concurrence of Justices Rodrigo V. Cosico and Arturo G. Tayag, CA rollo, pp. 109-127.

[13] TSN, June 22, 2004, pp. 26-27.

[14] Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165:

(a) The apprehending officer/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 Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[15] *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 269 citing *People v. Dela Cruz*, G.R. No. 177222, October 29, 2008.

[16] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 211-212.

[17] *People v. Simbahon*, G.R. No. 132371, April 9, 2003, 401 SCRA 94, 100.

[18] "x x x 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 of 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."

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

[20] *Records*, p. 47.

[21] *Supra* note 16.

[22] *Supra* note 19 at 633.

[23] *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).

[24] *TSN*, June 22, 2004, pp. 18-19.

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