

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DONATO CAPCO Y SABADLAB, ACCUSED-APPELLANT.

G.R. No. 183088. September 17, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Assailed before the Court is the Decision dated December 28, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02213 affirming the February 1, 2006 Decision in Criminal Case Nos. 03-3233 and 03-3561 of the Regional Trial Court (RTC), Branch 64 in Makati City. The RTC found accused-appellant Donato Capco liable for violation of certain provisions of Republic Act No. (RA) 9165 or The Comprehensive Dangerous Drugs Act of 2002.

The Facts

The records show that, in two separate informations filed before the RTC of Makati City, Capco was charged with violation of Section 5, Art. II of RA 9165 (illegal sale of dangerous drugs) and Sec. 15, Art. II of the same law (use of dangerous drugs), respectively, allegedly committed as follows:

Criminal Case No. 03-3233

That on or about the 21[st] day of August 2003, in the city of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero three (0.03) gram of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in consideration of one hundred (P100.00) pesos.

CONTRARY TO LAW.[1]

Criminal Case No. 03-3561

That on or about the 21[st] day of August 2003, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to use, administer and take any dangerous drugs, after confirmatory test was found to be positive for the use of Methylamphetamine which is [a] dangerous drug.

CONTRARY TO LAW.[2]

When arraigned on September 10, 2003 for violation of Sec. 5,[3] Art. II of RA 9165, Capco, assisted by counsel, entered a not guilty plea. He pleaded guilty, however, when later arraigned for the other charge of violation of Sec. 15[4] of RA 9165 and was, accordingly, sentenced to undergo a six-month rehabilitation, the execution of which, however, was deferred due to the pendency of Criminal Case No. 03-3233.

In the ensuing trial, the prosecution presented as witnesses PO2 Vicente Barrameda and PO1 Randy Santos. The

defense lined up Capco and Ace Bernal as witnesses.

The CA's decision under review summarizes the People's version of the events, as follows:

At about 8:30 in the evening of August 21, 2003, operatives from the Makati City Anti-Illegal Drugs Special Operation Task Force (AID-SOTF), acting on a confidential informant's tip, conducted a buy-bust operation in the vicinity of Dapitan St., Brgy. Guadalupe Nuevo, Makati City. The operation had for its subject, Capco. Acting as poseur-buyer, PO2 Barrameda, accompanied by the informant, was able to purchase one plastic sachet containing white crystalline substance with the use of PhP 100 in marked money. After the completion of the sale, PO2 Barrameda gave the operation's pre-arranged signal by ringing back-up PO1 Santos' mobile phone. The rest of the team then helped in arresting Capco who was then brought to the Makati AID-SOTF station. From there, appellant and the item subject matter of the sale were then brought to the Philippine National Police (PNP) Crime Laboratory in Camp Crame, Quezon City, for drug test and qualitative examination, respectively. As the chemistry report would later indicate, the urine taken from Capco and the specimen submitted were both found positive for the presence of methylamphetamine hydrochloride or shabu.[5]

On the other hand, the defense is grounded mainly on denial. To show his innocence, Capco claimed that when he alighted from a tricycle in front of his house coming from Guadalupe Market on August 23, 2003, he observed a commotion and saw four men chasing some people in the basketball court on Dapitan Street, Makati City. Suddenly he was dragged by unidentified persons inside a vehicle parked at Kalayaan Avenue and asked about a certain "Gary" whom he does not know. When they could not obtain any information from Capco, they brought him to the Office of the Drug Enforcement Unit (DEU). There the DEU Chief asked PhP 10,000 for his release.

Capco's story was collaborated by witness Bernal.[6] While Bernal was playing basketball with his cousins on Dapitan Street, Makati City, several men disembarked from a taxi and inquired on the whereabouts of "Gary." Then they suddenly chased somebody who was able to escape in an alley. After that, they saw two men went inside the house of Capco, who was later brought out and taken to a parked vehicle at Kalayaan Ave., Makati City.

In its decision of February 1, 2006, the RTC found Capco guilty beyond reasonable of the crime (illegal sale of shabu) charged in Criminal Case No. 03-3233. The fallo of the RTC's decision, which also included a portion to implement its ruling in Criminal Case 03-3561, reads:

WHEREFORE, in view of the foregoing, judgment is rendered against the accused DONATO CAPCO y SABADLAD finding him GUILTY beyond reasonable doubt of violation of Sec. 5, Art. II, Republic Act No. 9165 and sentencing him to suffer life imprisonment and to pay a fine of P500,000.00.

As regards the implementation of the judgment which this Court renders in Criminal Case No. 03-3561 for violation of Sec. 15, Art. II, RA 9165 and considering the aforestated sentence for violation of Sec. 5, Art. II, the accused is sentenced to undergo rehabilitation for at least six (6) months in a drug rehabilitation program under the auspices of the Bureau of Correction.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the one (1) piece of plastic sachet of shabu weighing 0.03 gram subject matter of these cases, for said agency's appropriate disposition.

SO ORDERED.[7]

On appeal, Capco questioned the RTC's decision on the ground that it convicted him in spite of the inadmissibility of the evidence against him and notwithstanding the prosecution's failure to present the alleged confidential informant. He, too, raised, as issues, the prosecution's failure to establish the prohibited nature, and the chain of

custody, of the seized item.

Unconvinced, the CA, by decision dated December 28, 2007, affirmed that of the trial court, noting, among other things, that the informant was not an indispensable witness. Apropos the custodial chain, the CA held that the non-presentation of the police investigator and the PNP Crime Laboratory personnel who received the shabu did not affect the People's case, as the prosecution witnesses presented sufficiently proved that the chain of custody of the seized shabu was never broken.

The decretal portion of the CA's decision reads:

WHEREFORE, in view of the foregoing, the appealed Decision dated February 1, 2006 of the Regional Trial Court of Makati, Branch 64 in Crim. Cases Nos. 03-3233 and 03-3561 is hereby AFFIRMED.

SO ORDERED.[8]

Capco subsequently filed, and the CA gave due course to, his notice of appeal from the decision of December 28, 2007.

On August 6, 2008, this Court required the parties to submit supplemental briefs if they so desired. They manifested, however, their amenability to submit the case on the basis of the records already on file.

As it was in the CA, Capco now asks the Court to overturn his conviction on the following issues which may be formulated, as follows:

1. The CA erred in affirming the appellant's conviction despite failure of the prosecution to present the alleged informant;
2. The evidence against appellant is inadmissible for having been obtained in violation of Sec. 21 of RA No. 9165; and
3. The prosecution failed to establish: (1) the item allegedly confiscated was indeed a prohibited drug and (2) the chain of custody of the specimen.

The Court's Ruling

We affirm the ruling of the CA.

Non-Presentation of Informant

Capco argues that the prosecution should have presented the informant or at least explained to the court's satisfaction why he was not made to testify. The informant's non-presentation, so he claims, is equivalent to suppression of evidence.

There is a logical and critical rationale behind the accepted practice of leaving out a confidential informant from the prosecution's roster of witnesses. As held in *People v. Peñaflorida, Jr.*,^[9] the presentation of an informant is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would merely be corroborative and cumulative. More importantly, as *Peñaflorida, Jr.* and other similar drug cases teach, informants are by and large not presented as witnesses in court as there is a need to conceal their identity and protect their important service to law enforcement. Living in the fringes of the underworld, these police assets may well be unwilling to expose themselves to possible liquidation by drug syndicates and their allies should their identities be revealed.

Violation of Sec. 21 of RA 9165

Capco next alleges that the buy-bust team violated Sec. 21(1) of RA 9165, quoted below, on the matter of

handling the contraband after a buy-bust operation:

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. - The PDEA shall take charge and have custody of all dangerous drugs, x x x 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.

Capco asserts that, in breach of what the aforequoted provision mandates, the apprehending police operatives did not, upon his arrest, take his photograph together with the alleged shabu sold. There was likewise no physical inventory of the seized item conducted in his presence or before his representative or counsel, and before representatives from the media and the Department of Justice as well as an elected public official.

Generally, non-compliance with Sec. 21 will not render an accused's arrest illegal or the items seized or confiscated from the accused inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as they would be utilized in the determination of the guilt or innocence of the accused.[10] As we shall later discuss, the integrity and evidentiary value of the seized drugs were preserved. We, thus, cannot sustain Capco's claim of inadmissibility of the drug.

Hiatus in Chain of Custody

Capco's last argument dwells on the prosecution's non-presentation of the personnel who touched or had physical possession of the suspected illegal item from the time it was seized up to the moment it was presented in court, or at least until it was examined by the forensic chemist. He claims that this non-presentation casts doubt on the accuracy of the chain of custody of the object evidence.

We agree with the appellate court's conclusion that the prosecution was able to show that the chain of custody was never broken. A careful review of the records supports this finding.

Following the successful drug transaction with Capco, PO2 Barrameda marked the plastic sachet of suspected shabu with "DSC." [11] A letter-request, signed by Police Superintendent Jose Ramon Q. Salido, was then sent to the PNP Crime Laboratory for an examination of the seized drugs. [12] Forensic Chemist Grace M. Eustaquio later filed Chemistry Report No. D-1049-03, [13] finding the white crystalline substance in the plastic sachet marked "DSC" positive for methylamphetamine hydrochloride or shabu. During trial, PO2 Barrameda [14] identified the same specimen as the shabu their team had seized from Capco and he had later marked with "DSC." PO1 Santos corroborated PO2 Barrameda's testimony by testifying that the specimen marked "DSC" was indeed the product of their buy-bust operation against Capco. [15]

In the prosecution for illegal sale of dangerous drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the traded substance--the object evidence which is the core of the corpus delicti. [16] These requirements have been sufficiently established in the instant case. What is more, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Capco has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers. [17] Capco failed in this respect.

Another presumption Capco failed to overcome relates to the prosecution's witnesses. Decisive in a prosecution for drug pushing or possession is the testimony of the police officers on what transpired before, during, and after the accused was caught and how the evidence was preserved. Their testimonies in open court are considered in line with the presumption that law enforcement officers have performed their duties in a regular manner, absent evidence to the contrary. In the absence of proof of motive to falsely impute a crime as serious as drug pushing against Capco, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over Capco's self-serving and uncorroborated denial.[18] This presumption holds true for the police officers in this case, as Capco could not provide a credible and believable account on why he was being falsely accused.

In sum, proof beyond reasonable doubt, as found by the RTC and affirmed by the CA, was established against Capco. Finding no showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied,[19] we affirm these courts' judgments.

Penalty Imposed

Capco was charged with violating Sec. 5, Art. II of RA 9165. For clarity we quote said provision again, which states:

Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.--The penalty of life imprisonment to death and a fine ranging from x x x (P500,000.00) to x x x (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, x x x or shall act as a broker in any of such transactions. x x x

We find the penalty of life imprisonment and a fine of PhP 500,000 in accordance with the penal provisions of RA 9165.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 02213 is hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

[1] CA rollo, p. 100.

[2] Id. at 101.

[3] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from [P500,000.00] to [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, x x x or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] Sec. 15. Use of Dangerous Drugs. - A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment x x x: Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

[5] CA rollo, p. 17.

[6] Id. at 17-18.

[7] Id. at 104-105. Penned by Judge Delia H. Panganiban.

[8] Rollo, p. 15. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Lucenito N. Tagle and Myrna Dimaranan Vidal.

[9] G.R. No. 175604, April 10, 2008, 551 SCRA 111, 121.

[10] People v. Teodoro, G.R. No. 185164, June 22, 2009.

[11] TSN, June 15, 2004, p. 11.

[12] Records, p. 9.

[13] Id. at 10.

[14] TSN, January 25, 2005, p. 68.

[15] TSN, June 15, 2004, p. 11.

[16] People v. Santos, G.R. No. 176735, June 26, 2008, 555 SCRA 578, 593.

[17] People v. Macatingag, G.R. No. 181037, January 19, 2009.

[18] People v. Llamado, G.R. No. 185278, March 13, 2009.

[19] People v. Darisan, G.R. No. 176151, January 30, 2009.

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