

DOMINGO M. ULEP, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 183849. June 11, 2011

Ponente: ABAD, J.

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ABAD, J.:

This is about irreconcilable inconsistencies in the testimonies of the arresting officers in a drugs case and their failure to preserve the integrity of the seized articles.

The Facts and the Case

The Assistant Provincial Prosecutor of Ilocos Norte charged the accused Domingo Ulep with aggravated illegal possession of shabu before the Regional Trial Court (RTC) of Laoag City, Branch 13, in Criminal Case 11863-13.

As summarized by the RTC, PO2 Elizer Tuzon and SPO3 Rogelio Labutong testified that on the morning of May 8, 2005, acting on a report that Ulep bought shabu at a certain Maria Karen Cacayorin's house at Mckinley Street, Barangay 13, San Nicolas, Ilocos Norte, the Chief Police Inspector dispatched the two officers to the place. When they were about 30 meters from Cacayorin's house, the officers saw Ulep walking on the street with a plastic sachet in his hand.

The officers approached and seized from Ulep two plastic sachets of what appeared to be shabu. They arrested and brought him to the police station where they turned over the seized sachets to SPO2 Ramon Butay. In turn, the latter turned over the articles to the Ilocos Norte Provincial Crime Laboratory Office where a forensic chemical officer found them to contain shabu.[1]

Ulep did not deny that he was in Barangay 13 on the morning of May 8, 2005. He went there to claim a package that his mother sent from abroad through an aunt. But his aunt had gone to Manila without leaving the package. While Ulep was waiting on the road to get a ride home, officer Tuzon and a certain Monmel Corpuz approached him in their motorbikes and took him near the Mobile Video Center where Tuzon frisked him, saying that they suspected him of coming from Cacayorin's house. Ulep denied this.

When officer Tuzon failed to get anything from Ulep, he eventually let him go, telling him not to show his face ever in that place. As Ulep started to walk away, he heard Corpuz, who was then crossing Mckinley Street, shout at Tuzon to get his attention. Ulep saw Corpuz waving a plastic sachet in his right hand. After talking to Corpuz, Tuzon approached Ulep, saying that the thing they got belonged to him. Tuzon apprehended Ulep and brought him to the police station.

On July 14, 2006 the RTC rendered a decision in the case, finding Ulep guilty of the crime charged and sentencing him to imprisonment ranging from 12 years and 1 day as minimum to 15 years as maximum and to pay a fine of P300,000.00 with costs.

On appeal, the Court of Appeals (CA) rendered judgment[2] dated July 18, 2008 in CA-G.R. CR 30328, affirming

the RTC's decision.

The Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in giving credence to the testimonies of the prosecution witnesses given certain inconsistencies in them;
2. Whether or not the CA erred in not excluding the evidence of the seized shabu on the ground of the prosecution's failure to prove the chain of custody over the same; and
3. Whether or not the CA erred in affirming the RTC's judgment of conviction.

The Rulings of the Court

Appellant Ulep insists that the testimonies of the two arresting officers cannot be believed because they are inconsistent and contradictory. The trial court itself noted these flaws. It said:[3]

The Court notes with concern these contradictions of PO2 Tuzon and SPO3 Labutong. We see here two police officers seemingly destroying each other's credibility by testifying inconsistently on simple details. This surely does not speak well of them because, by their involvement in the same operation, it is the least expected of them. x x x

Still, the RTC gave credence to the officers' testimonies, pointing out that the inconsistencies it noted were minor and in fact enhanced their truthfulness because they appeared to be unrehearsed. The Court disagrees. The disparity in the testimonies of those witnesses is too serious to be simply brushed aside.

Officer Tuzon testified[4] to receiving information directly from a police asset that someone was about to buy shabu from Cacayorin's house in Barangay 13. Their Chief then ordered Tuzon and officer Labutong to proceed to the place. They went in a tricycle driven by Tuzon. On reaching McKinley Street, the two officers saw a man in a white-and-blue stripes shirt. They were uncertain about where he came from but he held a plastic sachet containing white substance that he was hitting with his fingers.

The two officers stopped the man whom they later identified as Ulep. When officer Labutong searched Ulep, he found two plastic sachets on him. The officers brought Ulep to the police station where Labutong marked the confiscated sachets with the initials RBB-1 and RBB-2 and handed the same over to SPO2 Butay. The latter subsequently brought the sachets to the crime laboratory.

Officer Labutong, on the other hand, testified[5] that it was the Chief Police Inspector who heard, through an officer, of an information passed on by an asset that Ulep, who had been under surveillance for a month for using shabu, just left Cacayorin's house in Barangay 13. The Chief Police Inspector then ordered officers Labutong and Tuzon to verify the report. The two went to the described place, accompanied by the asset, on board a patrol car.

On reaching the place, the officers saw Ulep holding two small plastic sachets of shabu. They apprehended him, seized the sachets, and brought him to the police station. Officer Labutong turned over the sachets to officer Butay who marked the same as RBB-1 and RBB-2. The officers then submitted the specimens to the crime laboratory.

Appellate courts generally accord finality to the trial court's findings but not when, as in this case, such findings are evidently flawed.[6] Tuzon said that a police asset directly tipped him that Ulep was about to buy shabu from a source; Labutong said, however, that it was the Chief Police Inspector who told them that Ulep had just bought shabu from the source. Labutong said that the police had been watching Ulep as a user for a month before the incident; Tuzon said they only came to know Ulep after they apprehended and brought him to the police station.

Also, Tuzon said that he and Labutong went to Barangay 13 on board a tricycle that he drove; Labutong was sure, on the other hand, that they came in a patrol car which he himself drove. These inconsistencies are irreconcilable and could not possibly be the result of mere memory lapses. They bear the signs of poor fabrication.

Further, since custody and possession of the drugs usually change from the time they are seized to the time they are presented in court, it is indispensable that, if the drugs are already in sealed plastic sachets, the police officer involved immediately place identifying marks on the cover. If the drugs are not in a sealed container, the officer is to place them in a plastic container, seal the container, and put his marking on the cover. In this way there is assurance that the drugs would reach the crime laboratory analyst in the same condition it was seized from the accused.[7]

This did not happen here. None of the officers involved in the seizure marked the plastic sachets of alleged drugs. The markings took place at the police station already and it is not clear who made them. Tuzon testified that Labutong placed the markings; Labutong said that SPO2 Butay did it. Prompt marking of the seized items is vital because it serves as the starting point in the custodial link and succeeding handlers of the specimens often use the marking as reference.[8] Since the officers in this case could not even agree as to who made the required marking, then it would be difficult for the Court to rest easy that the specimens presented before the trial court were the same specimens seized from Ulep. These lapses cast a serious doubt on the authenticity of the corpus delicti, warranting acquittal on reasonable doubt.[9]

The Court has recently held that drug enforcement agencies should continually train their officers and agents to observe the rules governing drug-related cases and transfer out those who would not. Failure to observe these basic rules results not only in consequent acquittals but also in loss of precious time to futile exercise.[10]

WHEREFORE, the Court GRANTS the petition and SETS ASIDE the decision of the Court of Appeals dated July 18, 2008 in CA-G.R. CR 30328 and the decision of the Regional Trial Court of Laoag City in Criminal Case 11863-13, and ACQUITS the accused-appellant Domingo Ulep on the ground of reasonable doubt. The Court orders his immediate RELEASE from custody unless he is being held for some other lawful cause.

SO ORDERED.

Carpio, (Chairperson), Nachura, Brion,[*] and Peralta, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per raffle dated May 18, 2011.

[1] Chemistry Report D-019-2005, records, p. 8.

[2] Penned by Associate Justice Sesonando E. Villon and concurred in by Associate Justices Andres B. Reyes, Jr. and Jose Catral Mendoza (now a member of this Court).

[3] Records, p. 70.

[4] TSN, November 10, 2005, pp. 4-19.

[5] TSN, December 1, 2005, pp. 20-40.

[6] *People v. Andarme*, 434 Phil. 657, 665 (2002).

[7] *People v. Pajarin*, G.R. No. 190640, January 12, 2011.

[8] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

[9] People v. Laxa, 414 Phil. 156, 170 (2001).

[10] People v. Pajarin, supra note 7.

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