

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILSON SUAN Y JOLONGON, APPELLANT.

G.R. No. 184546. February 22, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Once again we find occasion to reiterate the most echoed constitutional guarantee that an accused in criminal prosecutions is presumed innocent until his guilt is proven beyond reasonable doubt.[1] To overcome the presumption of innocence and arrive at a finding of guilt, the prosecution is duty bound to establish with moral certainty the elemental acts constituting the offense. In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[2] The identity of the narcotic substance must therefore be established beyond reasonable doubt.[3]

We are compelled to acquit appellant in this case because the prosecution miserably failed to establish the identity of the substance allegedly seized from him. In addition, we find that there was a break in the chain of custody thereby casting doubt on the integrity and evidentiary value of the substance allegedly seized from the appellant.

This is an appeal from the Decision[4] dated March 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 00054. The CA affirmed in toto the Decision[5] dated November 17, 2004 of the Regional Trial Court (RTC) of Lanao del Norte, Branch 01, Iligan City finding appellant Wilson Suan y Jolongon guilty of violation of Section 11, Article II of Republic Act (RA) No. 9165, the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

On August 12, 2003, an Information was filed with the RTC of Lanao del Norte, Branch 6 against appellant for violation of Section 5, Article II of RA 9165. The case was docketed as Criminal Case No. 10315. Subsequent to his arraignment on September 6, 2003 wherein he pleaded not guilty and before the pre-trial, appellant filed an Urgent Motion for Re-Investigation[6] which the trial court granted on September 19, 2003.[7] As a result of the re-investigation, an Amended Information[8] was filed charging appellant with violation of Section 11, Article II of RA 9165. The accusatory portion of the Amended Information reads:

The undersigned Prosecutor III of Iligan City accuses WILSON SUAN y Jolongon for VIOLATION OF REPUBLIC ACT NO. 9165, committed as follows:

That on or about August 12, 2003, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) sachet of methamphetamine hydrochloride, a dangerous drug commonly known as shabu, weighing more or less 0.01 gram.

Contrary to and in violation of Republic Act No. 9165, Article II, Section 11, thereof.

City of Iligan, October 13, 2003.

The Amended Information was raffled to Branch 01 wherein appellant was arraigned and to which offense he pleaded not guilty.

The evidence for the prosecution, as culled from the testimonies of PO2 Allan Labasano (PO2 Labasano), PO1 Samsodim Gondol (PO1 Gondol),^[9] and Forensic Chemist Police Senior Inspector April Carvajal^[10] (Forensic Chemist Carvajal), is as follows:

On August 12, 2003 at about 3:30 a.m., PO2 Labasano and PO1 Gondol conducted a buy-bust operation at Purok 4, Saray, Iligan City. PO1 Gondol, who was provided with two pieces of P50.00^[11] bills, acted as the buyer while PO2 Labasano served as back-up. Upon reaching the target area, the two saw appellant sitting outside the house. PO1 Gondol approached appellant and the latter asked the former if he wanted to buy a narcotic substance. PO1 Gondol replied "I will buy "Piso", meaning P100.00. After a brief exchange of the money and the stuff, appellant was informed of his constitutional rights and thereafter was arrested. Appellant was brought to the police headquarters and presented before the investigator. At the police headquarters, PO2 Labasano prepared a Certificate of Inventory. The buy-bust money and the plastic sachet containing the stuff they recovered were turned over to the evidence custodian as related by PO1 Gondol, and to the Team Leader, as testified to by PO2 Labasano. Upon request, the plastic sachet was sent to the PNP Regional Crime Laboratory for examination.^[12]

Forensic Chemist Carvajal received the written request for laboratory examination of one sachet containing white crystalline substance submitted to their office.^[13] She conducted the test and the result showed that it contained methamphetamine hydrochloride or shabu, a dangerous drug. She then prepared Chemistry Report No. D-500-2003^[14] on her finding on the tests.

Appellant denied the charge against him. He claimed that while he was sleeping on a bench beside the road, PO2 Labasano suddenly held his arm and handcuffed him. PO2 Labasano inserted his hand into appellant's pocket, frisked him and shabu was later shown to him. He was brought to Tipanoy for a drug test and detained in jail for violation of the anti-drugs law.

Ruling of the Regional Trial Court

Giving full faith and credence to the prosecution's version, the trial court found the test-buy and buy-bust operation established. In its Decision dated November 17, 2004, the trial court found appellant guilty beyond reasonable doubt of the crime charged and disposed as follows:

WHEREFORE, premises considered, the Court find[s] the guilt of the accused WILSON SUAN y JOLONGON beyond reasonable doubt of the crime charged against him in the information and hereby sentences him to suffer the penalty of imprisonment from 12 years and 1 day to 20 years and to pay a fine of P100,000.00.

The shabu taken from him is hereby confiscated in favor of the government.

SO ORDERED.^[15]

Ruling of the Court of Appeals

Appellant appealed the trial court's Decision to the CA. Finding no error

committed by the trial court in convicting appellant of the offense of illegal possession of dangerous drug, the CA affirmed the trial court's decision.

Undaunted, appellant seeks a final recourse before this Court via the instant appeal.

In the Resolution dated November 24, 2008, we accepted the appeal and notified the parties that they may file

their respective supplemental briefs if they so desire. However, both parties manifested that they are adopting their respective briefs earlier submitted with the CA.

In support of his prayer for a reversal of the verdict of his conviction, appellant contends: a) that the testimonies of the police operatives contained material inconsistencies and contradictions as to (i) whether a surveillance was made prior to the buy-bust operation, (ii) whether there was marked money used in the operation, and, (iii) the amount of the shabu sold; b) there was no proper identification of the illegal drug; c) the prosecution witnesses failed to testify on matters regarding the possession of the illegal drug; and, d) the defense of alibi was not properly appreciated.

Our Ruling

The appeal is meritorious.

The inconsistencies in the testimonies of the police operatives as regards prior surveillance and use of marked money are immaterial.

While it may be conceded that there are a number of inconsistencies in the testimonies of the prosecution's principal witnesses as alluded to above, they are not, in our view, substantial enough to impair the veracity of the prosecution's evidence that a buy-bust operation resulting in the arrest of appellant, was indeed conducted. The maxim *falsus in unus, falsus in omnibus* does not lay down a categorical test of credibility. While witnesses may differ in their recollection of an incident, it does not necessarily follow from their disagreements that both or all of them are not credible and their testimonies completely discarded as worthless.

A prior surveillance much less a lengthy one, is not necessary during an entrapment as in the case at bench. To be sure, there is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. In this case, the buy-bust operation was set up precisely to test the veracity of the informant's tip and to arrest the malefactor if the report proved to be true. Thus in one case^[16] we emphasized our refusal to establish on a priori basis what detailed acts the police authorities might credibly undertake in their entrapment operations.

The doubt cast by the appellant on whether marked money was used in the operation did not in any way shatter the factuality of the transaction. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation.^[17] Much less is it required that the money be marked. In fact, not even the absence or non-presentation of the marked money would weaken the evidence for the prosecution.^[18] The elements necessary to show that the crime had indeed been committed are proof that the illicit transaction took place coupled with the presentation in court of the *corpus delicti* or the illicit drug.^[19]

It is a fundamental rule that the trial court's findings that are factual in nature and that involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings.^[20] The rule finds an even more stringent application where said findings are sustained by the CA.^[21] However, this rule will not apply in this case. As will be discussed shortly, the courts below overlooked two significant and substantial facts which if considered, as we do now consider, will affect the outcome of the case.

The prosecution failed to establish beyond reasonable doubt the identity of the substance recovered from the appellant

The main issue in the case at bench is whether the prosecution witnesses were able to properly identify the dangerous drug taken from appellant. For while the drug may be admitted in evidence it does not necessarily

follow that the same should be given evidentiary weight. It must be stressed that admissibility should not be equated with its probative value in proving the corpus delicti.

Appellant submits that the shabu alleged to have been sold was not properly identified by the police officers thus rendering doubtful and open to suspicion if the shabu submitted for examination is indeed the same substance sold by him.

We agree. As we have stated at the outset, the prosecution miserably failed to establish the identity of the substance allegedly recovered from the appellant. Records show that while the police officers were able to prove the factuality of the buy-bust operation, the prosecution dismally failed to prove the identity of the substance taken from appellant.

The Certificate of Inventory[22] prepared by PO2 Labasano merely stated that a sachet of a substance weighing 0.01 gram was seized from the appellant. PO2 Labasano made no mention that he placed some markings on the sachet for purposes of future identification. Thus:

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that an inventory was conducted in connection with the following operation:

Persons Arrested : Wilson Suan Y Jolongon

Date/Time of Arrest : 3:30 AM of 12 August 2003

Place of Arrest : Purok 4, Barangay Saray, Iligan City

This is to certify further that the following items were seized during the said operation:

One [1] sachet of suspected shabu weighing more or less .01 gram

Two [2] pieces Php 50.00 peso bill - marked money

x x x x (Emphasis supplied)

However, we find it rather odd that in the Request for Laboratory Examination/Urine Test[23] prepared by Police Chief Inspector Jesus Atchico Rebuta and addressed to the Provincial Chief of Police, Lanao del Norte, the item allegedly seized from the appellant was already marked as Exhibit "A". Thus:

x x x x

2. Request the conduct of laboratory examination of evidence to determine the presence of Dangerous Drugs or controlled precursors and essential chemicals:

EXHIBITS

Exh. "A"

one small heat-sealed, plastic transparent sachet containing white crystalline granules suspected to be shabu weighing more or less 0.01 grams marked as Exh. "A" placed in a stapled transparent plastic bag.

x x x x (Emphasis supplied)

Still, in the Memorandum[24] for the Regional Chief of the Philippine National Police (PNP) Crime Laboratory Office prepared by the Provincial Chief, the item subject of the request for laboratory examination was already referred to as with markings. Thus:

x x x x

2. In connection with the above reference, request conduct laboratory examination on the specimen described

below to determine the presence of dangerous drugs.

EXH. A - One (1) small heat-sealed transparent plastic sachet marked as "Exhibit A" containing white crystalline substance suspected to be SHABU placed inside a big staple-sealed transparent plastic pack with markings.

x x x x (Emphasis supplied)

Thus, when the Certificate of Inventory was prepared by PO2 Labasano, the item allegedly seized from the appellant bore no markings. However, in the Request for Laboratory Examination/Urine Test prepared by the Provincial Chief of Police, the item being subjected for laboratory examination was already referred to as Exhibit A. Next, in the Memorandum of the Regional Chief of PNP, the item that was referred to the Forensic Chemist already had other markings. From the foregoing, there is already doubt as to the identity of the substance being subjected for laboratory examination. At this time, we are no longer sure whether the item allegedly seized by PO2 Labasano from the appellant was the same item referred to by the Provincial Chief and then the Regional Chief of PNP to the Forensic Chemist for laboratory examination.

Worse, in the Certificate of Inventory prepared by PO2 Labasano, the Memorandum prepared by the Provincial Chief, and the transmittal letter prepared by the Regional Chief, the substance supposedly weighed 0.01 gram. However, in the Chemistry Report No. D-500-2003[25] prepared by Forensic Chemist Carvajal, the substance was indicated as weighing 0.1 gram. Thus:

x x x x

SPECIMEN SUBMITTED:

A = One (1) heat-sealed transparent plastic sachet with markings EXHIBIT A containing 0.1 gram of white crystalline substance, placed in a transparent plastic bag with markings EXHIBIT A.

x x x x

Indeed there is absolutely nothing in the evidence on record that tends to show identification of the drug. For sure, the difference particularly in the weight of the substance is fatal to the case of the prosecution.

Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug. In *People v. Magat*,^[26] we held that the existence of dangerous drugs is a condition sine qua non for conviction for the illegal sale and possession of dangerous drugs, it being the very corpus delicti of the crime. In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of paramount importance therefore in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt.^[27]

It is lamentable that the trial court and even the appellate court overlooked the significance of the absence of this glaring detail in the records of the case but instead focused their deliberation on the warrantless arrest of appellant in arriving at their conclusions.

The prosecution failed to establish the unbroken chain of custody of the confiscated substance.

Not only did the prosecution fail to identify the substance that was allegedly seized from the appellant; it also failed to establish that the chain of custody of the substance was unbroken.

In his direct testimony, PO2 Labasano testified that:

Q.

After arresting the accused, what transpired thereafter?

A.

We brought him in our office and we filed a case against him.

Q.

By the way, who brought the sachet which you bought from the accused to the crime laboratory for examination?

A.

We, I with Gundol.

Q.

And who received that sachet?

A.

A certain person who was on duty at that time but I do not know him.[28]

In contrast, PO2 Labasano stated during his cross-examination that he entrusted the substance recovered from the appellant to their team leader. Thus:

Q.

Who was in possession of that sachet of shabu?

A.

When they approached the accused, I saw the accused taking the sachet of shabu from his pocket and putting it on his hand and I did not see what had happened already.

Q.

You did not see who received the sachet of shabu coming from the suspect?

A.

I was able to take of that but it was really Gundol who bought that shabu from him.

Q.

And who recovered the marked money from the accused?

A.

It was Gundol also.

Q.

So, it was PO1 Gundol who was in possession of this marked money and one (1) sachet of shabu from the time the suspect was arrested, is it not?

A.

Yes, sir.

Q.

And what did you do with that marked money [or] that alleged shabu being confiscated from the accused?

A.

We turned it over to our team leader.

Q.

Are you referring to SPO2 Cañonero?

A.

Yes, sir.[29]

The foregoing testimonies of PO2 Labasano are contradictory. At first, he testified that the substance recovered from the appellant was delivered to the crime laboratory but he did not know who received the same. On cross-examination, however, he claimed that the substance was delivered to their team leader, SPO2 Cañonero.

Notably, the prosecution failed to put on the witness stand SPO2 Cañonero or the person from the crime laboratory who allegedly received the substance. Consequently, there was a break in the chain of custody because no mention is made as regards what happened to the substance from the time SPO2 Cañonero received it to the time the transmittal letter was prepared by Police Chief Inspector Jesus Atchico Rebuta addressed to the Provincial Chief of Police, Lanao del Norte requesting for laboratory examination/urine test. We do not know how or from whom Police Chief Inspector Jesus Atchico Rebuta received the substance.

There is no dispute that in the Chemistry Report[30] it was established that the object examined was found positive for methamphetamine hydrochloride or shabu, a dangerous drug. While the Forensic Chemist showed the contents of the sachet as the substance she examined and confirmed to be shabu, nonetheless, it is not positively and convincingly clear from her testimony that what was submitted for laboratory examination and later presented in court as evidence was the same shabu actually recovered from the appellant. The Forensic Chemist did not testify at all as to the identity of the person from whom she received the specimen for examination.

Verily, there is a break in the chain of custody of the seized substance. The standard operating procedure on the seizure and custody of the drug as mandated in Section 21, Article II of RA 9165 and its Implementing Rules and Regulations was not complied with. As we observed, the chain of custody of the drug from the time the same was turned over to the Team Leader, as testified by PO2 Labasano or the Records Custodian as related by PO1 Gondol, to the time of submission to the crime laboratory was not clearly shown. There is no indication whether the Team Leader and the Records Custodian were one and the same person. Neither was there reference to the person who submitted it to the crime laboratory. The prosecution needs to establish that the Team Leader or Records Custodian indeed submitted such particular drug to the crime laboratory for examination. The failure on the part of the Team Leader or Records Custodian as the case may be, to testify on what he did with the drug while he was in possession resulted in a break in the chain of custody of the drug. There is obviously a missing link from the point when the drug was in his hands to the point when the same was submitted for examination. The failure to establish the evidence's chain of custody is fatal to the prosecution's case. Under no circumstance can we consider or even safely assume that the integrity and evidentiary value of the drug was properly preserved by the apprehending officers. There can be no crime of illegal possession of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drug.[31]

Jurisprudence abounds with cases where deviation from the standard procedure in an anti-narcotics operation produces doubts as to the identity and origin of the drug which inevitably results to the acquittal of the accused. In

People v. Mapa,[32] we acquitted the appellant after the prosecution failed to clarify whether the specimen submitted to the National Bureau of Investigation for laboratory examination was the same one allegedly taken from the appellant. Also in People v. Dimuske,[33] we ruled that the failure to prove that the specimen of marijuana examined by the forensic chemist was that seized from the accused was fatal to the prosecution's case. The same holds true in People v. Casimiro[34] and in Zarraga v. People[35] where the appellant was acquitted for failure of the prosecution to establish the identity of the prohibited drug which constitutes the corpus delicti. Recently in Catuiran v. People,[36] we acquitted the petitioner for failure of the prosecution witnesses to observe the standard procedure regarding the authentication of the evidence.

In the light of the above disquisition, we find no further need to discuss the

other remaining argument regarding the propriety of appellant's conviction for violation of Section 11, Article II of RA 9165 when the evidence adduced and proved during the trial consists mainly of acts pertaining to a sale of dangerous drugs under Section 5, Article II of the said law. From whatever angle we look at it, whether it was a sale or merely possession of the dangerous drug, we arrive at the same conclusion that the prosecution has not proven the indispensable element of corpus delicti of the crime. To repeat, the existence of dangerous drugs is a condition sine qua non for conviction for the illegal sale and possession of dangerous drugs, it being the very corpus delicti of the crime.

Based on these findings and following our precedents in the afore-mentioned cases, we are compelled to reverse the judgment of conviction in this case. Consequently, we need not pass upon the merits of appellant's defense of denial and frame-up. It is a well-entrenched rule in criminal law that the conviction of an accused must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense.[37]

WHEREFORE, on ground of reasonable doubt, the instant appeal is GRANTED and the challenged Decision of the Court of Appeals in CA-G.R. CR No. 00054 affirming the Decision of the Regional Trial Court of Lanao del Norte, Branch 01, in Criminal Case No. 10315 is hereby REVERSED. Appellant WILSON SUAN y JOLONGON is hereby ACQUITTED and ordered released from detention unless his further confinement is warranted for some other lawful cause or ground.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] Constitution, Article III, Section 14(12).

[2] People v. Simbahon, 449 Phil. 74, 83 (2003); Corino v. People, G.R. No. 178757, March 13, 2009.

[3] Malillin v. People, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[4] CA rollo, pp. 129-145; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Mario V. Lopez and Elihu Y. Ybañez.

[5] Records, pp. 62-67; penned by Judge Mamindiara P. Mangotara.

[6] Id. at 18.

[7] Id. at 20.

[8] Id. at 21.

[9] Spelled as Gundol in the TSN.

- [10] Sometimes spelled as Carbajal in the records.
- [11] Exhibit "A" and "A-1", records, p. 53.
- [12] Exhibit "D", id. at 56.
- [13] Exhibit "E", id. at 56 (posterior part).
- [14] Exhibit "F", id. at 57.
- [15] Id. at 67.
- [16] *People v. Gonzales*, 430 Phil. 504, 514 (2002).
- [17] *People v. Fabro*, 382 Phil. 166, 177 (2000).
- [18] *People v. Simbulan*, G.R. No. 100754, October 13, 1992, 214 SCRA 537, 546.
- [19] *People v. Chang*, 382 Phil. 669, 684 (2000).
- [20] *People v. Julian-Fernandez*, 423 Phil. 895, 911-912 (2001).
- [21] *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.
- [22] Exhibit "2", records, p. 6.
- [23] Exhibit "B", id. at 54.
- [24] *Supra* note 12.
- [25] *Supra* note 14.
- [26] G.R. No. 179939, September 29, 2008, 567 SCRA 86, 94.
- [27] *Catuiran v. People*, G.R. No. 175647, May 8, 2009, 587 SCRA 567.
- [28] TSN, April 12, 2004, pp. 5-6.
- [29] Id. at 14-15.
- [30] *Supra* note 14.
- [31] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611, 628-629.
- [32] G.R. No. 91014, March 31, 1993, 220 SCRA 670, 679.
- [33] G.R. No. 108453, July 11, 1994, 234 SCRA 51, 61.
- [34] 432 Phil. 966, 979 (2002).
- [35] G.R. No. 162064, March 14, 2006, 484 SCRA 639, 647.
- [36] G.R. No. 175647, May 8, 2009, 587 SCRA 567.
- [37] *People v. Teves*, 408 Phil. 82, 102 (2001).

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