PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JULIUS GADIANA Y REPOLLO, APPELLANT.

G.R. No. 184761. September 08, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Julius Gadiana y Repollo (appellant) was convicted of violation of Section 11, Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act) by the Regional Trial Court of Cebu City, Branch 15 under what appears to be a form Information[1] reading:

> The undersigned Prosecutor II of the City of Cebu accuses Julius Gadiana y Repollo, for Violation of Sec. 11, Art. 9165, committed as follows:
>
> That on or about the 7[th] day of February, 2004, at about 3:40 P.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, x x x, with deliberate intent, did then and there have in his/her possession and under his/her control the following:
>
> A - Two (2) heat-sealed transparent plastic packets of white crystalline substance with a total net weight of 0.09 grams.
>
> locally known as `SHABU', containing methamphetamine hydrochloride a dangerous drug/s, without being authorized by law.[2]
>
> CONTRARY TO LAW.
>
> BAIL RECOMMENDED: P200.000
>
> Cebu City, Philippines, February 19, 2004.
>
> JESUS P. FELICIANO
> Prosecutor II, Cebu City[3]
>
> (underscoring in the original)

At the pre-trial, the parties stipulated "that the Forensic Officer Jude Daniel Mendoza will testify, and affirm and confirm his findings and conclusion within the four corners of his forensic report" with the clarification that what was admitted was the "existence but not the source" [4]

of the two sachets.

Lone prosecution witness PO1 Julius Busico (PO1 Busico) adopted as his testimony at the witness stand the February 9, 2004 Joint Affidavit[5] which he and PO3 Joseph Dinauanao (PO3 Dinauanao) executed. In the Joint Affidavit, the police officers related the following version:

At about 3:40 P.M. on February 7, 2004, while PO1 Busico, along with PO3 Dinauanao, PO2 Erwin Ferrer, and three other police officers, was conducting saturation drive at Sitio San Roque, Barangay Mambaling, Cebu City,

he chanced upon appellant holding two small plastic sachets containing crystalline substances which he was about to place inside his pocket.[6]

The policemen, identifying themselves as such, apprehended appellant at once, confiscated the two sachets from his right hand, brought him with the confiscated sachets to their office, and turned over the sachets to the Philippine National Police (PNP) Crime Laboratory Service which found them positive for methamphetamine hydrochloride.[7]

PO1 Busico added the following details at the witness stand:

> PROSEC. AGAN:
>
> Q
>
> After you recovered these [two plastic sachets] from the possession of the accused, what did you do?
>
> A
>
> We submitted it to the PNP Crime Laboratory.
>
> Q
>
> Can you still recall who prepared the letter request for laboratory examination?
>
> A
>
> PO2 Erwin Ferrer.
>
> Q
>
> If shown to you would you be able to identify it?
>
> A
>
> Yes.
>
> Q
>
> Are you referring to this letter request dated February 17 [sic], 2004?
>
> A
>
> Yes.
>
> PROSEC. AGAN:
>
> We request, your Honor, that the letter request be marked as our exhibit C.
>
> COURT:
>
> Mark it.
>
> PROSEC. AGAN:

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Who brought the letter request to the PNP Crime Laboratory?

A

PO2 Erwin Ferrer.

Q

Do you know the result of the laboratory examination?

A

Yes.

Q

What was the result?

A

Positive.

PROSEC. AGAN:

We request, your Honor, that Chemistry Report No. D-241-2004 be marked as our Exhibit D.

COURT:

Mark it.

PROSEC. AGAN:

Q

Do you affirm and confirm to the truthfulness of the contents [of the] joint affidavit?

A

Yes ma'am.[8] (underscoring supplied)

Upon the other hand, appellant, denying the accusation, gave the following version:

While he was, on the date and time in question, walking along an alley in Sitio Tromar, Mambaling, Cebu City (where his house is situated) on his way to Sitio Paglaum where he used to stand by,[9] after three of the six above-named policemen passed by him, the fourth, prosecution witness PO1 Busico, uttered "This is the one, this is the one. This is very obvious."[10] PO1 Busico at once held his arms and dipped into his (appellant's) pocket[11] upon which he (appellant) suggested that he (appellant) would just be the one to do it,[12] thereby catching the policeman's ire. He was at once handcuffed by PO1 Busico who is familiar to him as he always saw him "every Friday afternoon [when he and company went] roving there."

Appellant specifically denied the claim of PO1 Busico that he was holding two plastic packs of shabu which he was about to pocket.

By Decision of October 12, 2005, Branch 15 of the Regional Trial Court of Cebu City convicted appellant as charged, disposing as follows:

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> WHEREFORE, in view of the foregoing, the Court finds the accused Julius Gadiana y Repollo GUILTY beyond reasonable doubt for violation of Section 11, Article II of R.A. 9165 and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer imprisonment of EIGHT (8) YEARS AND ONE (1) DAY OR PRISION MAYOR AS MINIMUM TO TWELVE (12) YEARS AND ONE (1) DAY OF RECLUSION TEMPORAL AS MAXIMUM AND TO PAY A FINE OF THREE HUNDRED THOUSAND (P300,000.00) PESOS together with all accessory penalties provided for by law. The physical evidence is hereby forfeited in favor of the government to be disposed of in accordance with law.
>
> SO ORDERED.[13]

In convicting appellant, the trial court gave a one-paragraph ratiocination, viz.

> With the bare and lame denials of the accused, abjectly uncorroborated and without substantiation, apart from his self-serving attempt at extenuation as against the positive testimony of the arresting police officer who enjoys the presumption of regularity in the performance of his official duties, there being no showing of malicious motive to testify against the accused, it is the Court's view that the State has successfully discharged its prosecutory function by sufficiently showing the concurrence of the elements of the offense charged.[14] (emphasis and underscoring supplied)

On appeal, the appellate court, by Decision of April 30, 2008,[15] affirmed that of the trial court's but modified the penalty, holding that the nomenclature and periods of the penalties under the Revised Penal Code should not have been used by the trial court in the determination thereof as it (the trial court) should have been guided by the provisions of the Indeterminate Sentence Law. Thus the appellate court disposed:

> WHEREFORE, the appealed Decision dated October 12, 2005 of the RTC of Cebu City, in Criminal Case No. CBU-68618 convicting accused-appellant Julius Gadiana y Repollo for violation of Section 11, Article II of R.A. 9165, is AFFIRMED with MODIFICATION. As modified, accused-appellant is sentenced to suffer to suffer an indeterminate penalty of imprisonment from TWELVE (12) YEARS AND ONE (1) DAY as minimum, to FOURTEEN (14) YEARS as maximum.
>
> SO ORDERED.[16] (underscoring supplied)

Hence, the present appeal.

Appellant maintains that his guilt was not proven beyond reasonable doubt.

As reflected above, the trial court credited the "positive" version of PO1 Busico in light of the presumption of regularity in the performance of his official duties and absent a showing of malice.

Recall, however, that during the pre-trial, the "existence but not the source" of the two sachets was stipulated on by the parties. It was thus incumbent on the prosecution to prove the chain of custody rule.

Chain of custody establishes the identity of the subject substance.[17] It requires that testimony be presented about every link in the chain, from the moment the item is seized up to the time it is offered in evidence.[18] When nagging doubts persist on whether the item confiscated is the same specimen examined and established to be prohibited drug,[19] there can be no crime of illegal possession of a prohibited drug.

Except for the charge sheet[20] prepared against appellant which stated that evidence consisted of "two (2) heat-sealed clear plastic sachets containing shabu with markings `JGR-1' and `JGR-2,'" nowhere in the record is a showing that the marking was done in the presence of appellant or his representatives or that a physical inventory and photograph of the seized items were taken as required under paragraph 1, Section 21, Article II of R.A. No. 9165 reading:

> 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. (emphasis supplied)
>
> x x x x

Non-compliance with the above-quoted requirements does not of course necessarily render void and invalid the seizure of the dangerous drugs, provided that there are justifiable grounds to warrant exception therefrom.[21] The prosecution must, therefore, explain the reasons behind the procedural lapses[22] and must show that the integrity and value of the seized evidence had been preserved.[23]

In their Joint Affidavit[24] which served as part of PO1 Busico's testimony, he and PO3 Joseph merely stated that they brought appellant, together with the confiscated evidence, to their office for proper documentation and filing of appropriate charges. No statement was made that the allegedly seized sachets were the same sachets which were subject of the letter-request for laboratory examination prepared and brought to the Crime Laboratory by PO2 Ferrer per PO1 Busico.

The general rule is that the trial court's findings, its assessment of probative weight of the evidence of the parties, and its conclusion anchored on such findings are entitled to great respect as, among other things, it has the opportunity to observe the demeanor of witnesses.[25]

During his brief testimony earlier quoted, aside from confirming the contents of the Joint Affidavit he executed with PO3 Dinauanao which served as his direct testimony, PO1 Busico declared that PO2 Edwin Ferrer prepared and brought the letter-request for laboratory examination to the PNP Crime Laboratory. On pages 6-7 of the Records which appear to be a segment of the police blotter reflecting the arrest on February 7, 2004 of appellant, appears the following information:

> A/Taken: Evidence . . . submitted to the PNP Crime Laboratory.
> Received by: SPO1 Abundio C. Cabahug, PNP

Not only was PO1 Busico's testimony that Ferrer prepared the letter-request for laboratory examination hearsay as he did not claim having seen PO3 Dinauanao actually prepare it. The transcripts of stenographic notes do not show that the trial court tested the credibility of witness PO1 Busico and of his testimony. The trial court's conviction of appellant upon its above-quoted one-paragraph ratiocination, which was affirmed by the appellate court, does not thus merit this Court's affirmance.

Parenthetically, appellant's arrest, not to mention resulting confiscation of the alleged confiscation of the plastic sachets of crystalline substances in his possession, leaves nagging doubts on its validity in light of the fact that what PO1 Busico merely saw was appellant's placing of the plastic sachets in his pocket which, without more, does not justify his warrantless arrest under the Rules.[26]

WHEREFORE, the April 30, 2008 Decision of the Court of Appeals is REVERSED and SET ASIDE. Appellant, Julius Gadiana y Repollo, is ACQUITTED of the crime charged and ordered immediately RELEASED from custody, unless he is 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 action taken.

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

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SO ORDERED.

Bersamin, Del Castillo,[*] Villarama, Jr., and Sereno, JJ., concur.

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[*] Additional member per Special Order No. 879 dated August 13, 2010.

[1] Exhibit "A," records, p. 5. The form appears to be a photocopy. But the typewritten entries above the blank spaces appear to be original.

[2] The underlined portions appear to have been blank spaces over which the data filled over then were supplied with a different typeset.

[3] Records at 1.

[4] People v. Almorfe, G.R. No. 181831, March 29, 2010.

[5] Vide note 1.

[6] Ibid.

[7] Ibid.

[8] Transcript of Stenographic Notes (TSN), June 21, 2005, pp. 5-7.

[9] TSN, September 27, 2005 at 3-4.

[10] Id. at 4.

[11] Id. at 5.

[12] Ibid.

[13] Records, p. 59.

[14] Id. at 58-59.

[15] Penned by Justice Francisco P. Acosta, with the concurrence of Justices Amy C. Lazaro-Javier and Florito S. Macalino, CA rollo, pp. 77-90.

[16] Id. at 90.

[17] People v. Barba, G.R. No. 182420, July 23, 2009, 593 SCRA 711.

[18] People v. Habana, G.R. No. 188900, March 5, 2010.

[19] Valdez v. People, G.R. No. 170180, November 23, 2007, 538 SCRA 611.

[20] Records., p. 8.

[21] 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

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properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[22] People v. Garcia, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 272.

[23] People v. Sanchez, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

[24] Vide note 1.

[25] Quinto v. Andres, G.R. No. 155791, March 16, 2005, 453 SCRA 511, 526.

[26] Section 5 of Rule 113 of the Rules of Court provide:

A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

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