PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIANITO GONZAGA Y JOMAYA, APPELLANT.

G.R. No. 184952. October 11, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

It is the State's policy to safeguard the well-being of its people from the harmful effects of dangerous drugs.[1] Towards this end, law enforcers relentlessly exert their best effort to curb, if not eradicate, illicit drugs trade and all activities associated therewith. As for this Court, it reiterates its commitment to apply the law against those who engage in illegal drug trade, without compassion.[2]

Factual Antecedents

On August 1, 2002, an Information[3] charging appellant Marianito Gonzaga y Jomaya with violation of Section 15, Article III of Republic Act (RA) No. 6425, otherwise known as "The Dangerous Drugs Act of 1972," as amended, was filed in the Regional Trial Court of San Pedro, Laguna, Branch 31. The Information contained the following accusatory allegations:

> That on or about May 13, 2002, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute two (2) heat-sealed transparent plastic sachets containing METHAMPHETAMINE HYDROCHLORIDE (shabu) with a total weight of 206.09 grams to a Police Poseur-Buyer in exchange for ONE HUNDRED SEVENTY THOUSAND (P170,000.00) Pesos, wherein one (1) piece of a marked P1,000.00 bill with serial number W694556 was used and the rest were boodle money.
>
> CONTRARY TO LAW.

Appellant entered a plea of "not guilty" when arraigned. After the termination of the pre-trial conference, trial ensued.

The Version of the Prosecution

The evidence presented by the prosecution established the following case against appellant:

On May 13, 2002, at around one o'clock in the afternoon, a confidential informant arrived at the 4[th] Regional Narcotics Office, Camp General Vicente Lim, Calamba, Laguna to report that appellant, alias Jun, was selling illegal drugs. The confidential informant claimed that he had gained the trust of appellant due to previous transactions. Police Senior Inspector Julius Ceasar Viernes Ablang[4] (P/Sr. Insp. Ablang) immediately organized a buy-bust team with him as the leader, SPO2 Marcelino Male (SPO2 Male) as the poseur-buyer, and PO3 Marino Garcia (PO3 Garcia) and SPO3 Rico Atienza (SP03 Atienza) as police back-up.

P/Sr. Insp. Ablang instructed the confidential informant to contact appellant by phone. He complied and

introduced SPO2 Male, who, as poseur-buyer, talked to appellant and successfully arranged for the purchase of 200 grams of shabu for P170,000.00. Delivery would take place in front of Shakey's at Pacita Complex, San Pedro, Laguna in the late afternoon of the same day.

It was later agreed upon during the briefing that SPO2 Male and the confidential informant would conduct the buy-bust operation inside a vehicle. SPO2 Male would turn on the hazard lights to signify the consummation of the sale. P/Sr. Insp. Ablang then gave SPO2 Male a genuine P1,000.00 bill with serial number W694556. SPO2 Male, in turn marked the bill with his initials "MPM," set it on top of the boodle money, and put it inside a white paper envelope.

At around five o'clock in the afternoon, the police buy-bust team proceeded to the designated area. Upon reaching the place, SPO2 Male and the confidential informant parked their vehicle while the other team members positioned themselves nearby and waited for the appellant to arrive. While the confidential informant was waiting outside the vehicle, appellant appeared. They (the appellant and the informant) then approached the vehicle of SPO2 Male, who was occupying the driver's seat. Appellant entered and sat in the front while the confidential informant sat behind him.

The confidential informant introduced appellant to SPO2 Male as the person he talked to over the phone. SPO2 Male then asked appellant if he had the shabu, to which the latter replied in the affirmative and in turn asked SPO2 Male if he had the money. SPO2 Male showed appellant the envelope containing the money but demanded to see the shabu before turning it over. Appellant gave him a clutch bag that contained two small plastic sachets of white crystalline substance. Satisfied, SPO2 Male handed over the envelope with the buy-bust money and turned on the hazard lights of the vehicle. As SPO2 Male introduced himself to appellant as a narcotics agent, PO3 Garcia opened the door of the car and immediately arrested appellant after apprising him of his constitutional rights. The buy-bust money was recovered from appellant while the sachets of white crystalline substance were turned-over to P/Sr. Insp. Ablang.

At the police station, P/Sr. Insp. Ablang gave the sachets to SPO2 Male who marked them with his initials, "MPM." He later prepared a written request for laboratory examination dated May 13, 2002 and personally submitted the sachets to the crime laboratory. Chemistry Report No. D-998-02[5] dated May 13, 2002 which was issued by Forensic Chemist Donna Villa P. Huelgas (Forensic Chemist Huelgas) indicated that the two sachets contained 206.09 grams of methamphetamine hydrochloride or shabu.

The Version of the Appellant

Denying the allegations against him, appellant asserted that in the morning of May 13, 2002, his sister Marianne requested him to accompany her to San Pedro, Laguna, where she would withdraw money and collect payment from a debtor. At around two o'clock in the afternoon, they arrived in said place and his sister withdrew money from Metrobank. Thereafter, they ate in a restaurant in Pacita Complex. While eating, Marianne received a phone call that the debtor would be arriving soon. About 20 minutes later, the debtor arrived in his car and parked in front of the restaurant. Upon Marianne's request, appellant approached the driver of the vehicle to collect the money on her behalf. The driver asked if he is Jun, the brother of Marianne. When he replied in the affirmative, he was told to get inside the car. He complied, but was surprised when the driver sped away from the restaurant. He asked for Marianne's money, but did not receive any reply. Instead, three men alighted from a van trailing them and boarded the vehicle he was riding in. One of them who was brandishing a gun handcuffed him. They brought him to Camp General Vicente Lim where he saw SPO2 Male, PO3 Garcia and P/Sr. Insp. Ablang for the first time. The latter called up his father and demanded P500,000.00 for his release. Refusal would result to his indictment for illegal sale of dangerous drugs, which is a non-bailable offense.

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Appellant testified further that Marianne is married to Vicente Sy (Vicente), who is serving the penalty of life imprisonment at the National Bilibid Prison for drug trafficking. Vicente threatened her sister that something bad would happen to her family if she would separate from him.

Marianne and Marianito Gonzaga, Sr. corroborated the testimony of appellant.

Ruling of the Regional Trial Court

On May 27, 2004, the trial court rendered a Decision convicting appellant for violation of Section 15, Article III of RA 6425, as amended. The dispositive portion of the Decision reads:

> IN VIEW THEREOF, this Court finds that the prosecution represented by Assistant Provincial Prosecutor Melchorito M.E. Lomarda has duly established the guilt of the accused beyond reasonable doubt of the crime of Violation of Section 15, Article III of RA 6425, as amended, without having been authorized/permitted by law.
>
> WHEREFORE, judgment is hereby rendered sentencing accused Marianito Gonzaga y Jomaya to suffer the penalty of reclusion perpetua, to pay a fine of P500,000, and to pay the costs of suit.
>
> The Officer-in-Charge of this Court is hereby directed to turn-over the evidence consisting of shabu with a total weight of 206.09 grams to the Philippine Drug Enforcement Agency (PDEA) for its proper disposition.
>
> SO ORDERED.[6]

Decision of the Court of Appeals

Due to the penalty imposed, the case was elevated directly to this Court. Conformably with People v. Mateo,[7] the case was then transferred to the Court of Appeals (CA), which sustained in all respects the judgment of the trial court. The dispositive portion of its Decision[8] reads:

> WHEREFORE, premises considered, the Appeal is hereby DENIED and the questioned Decision dated May 27, 2004 of the Regional Trial Court (RTC), Branch 31, San Pedro, Laguna in Criminal Case No. 3028-SPL is AFFIRMED in toto.
>
> SO ORDERED.[9]

Thus, this appeal.

Assignment of Errors

In his Brief,[10] appellant initially assigned the following errors:

> - THE RTC GRIEVOUSLY ERRED IN FINDING THAT THE PHYSICAL AND TESTIMONIAL EVIDENCE PRESENTED BY THE PROSECUTION HAVE PROVEN BEYOND REASONABLE DOUBT THE CULPABILITY OF [APPELLANT] FOR THE CRIME HE IS BEING ACCUSED OF.
>
> - THE RTC GRIEVOUSLY ERRED IN RELYING HEAVILY ON THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTION ON THE PART OF THE ARRESTING OFFICERS WHEN THE EVIDENCE SHOWS OTHERWISE.
>
> - THE RTC GRIEVOUSLY ERRED IN HOLDING THAT THE PROSECUTION HAS PRESENTED EVIDENCE SUFFICIENT TO PRODUCE MORAL CERTAINTY OF THE GUILT OF [APPELLANT].
>
> - THE RTC GRIEVOUSLY ERRED WHEN IT CONVICTED [APPELLANT] DESPITE THE NON-PRESENTATION OF THE INFORMANT THEREBY DEPRIVING THE [APPELLANT] OF HIS CONSTITUTIONAL RIGHT TO CROSS-EXAMINE HIS ACCUSER.[11]

Appellant assigned two more errors in his Supplemental Brief,[12] to wit:

> - The Regional Trial Court as well as the Honorable Court of Appeals erred in convicting the accused for violation of the crime of violation of Section 15, Article III of R.A. 6425, as amended[, d]espite the fact that [the] defense has proven by clear and convincing evidence that no buy-bust operation was conducted [on] 13 May 2002.
>
> - The Regional Trial Court as well as the Honorable Court of Appeals erred in convicting Marianito Gonzaga for violation of Section 15, Article III of R.A. 6425, as amended, despite the fact that the alleged shabu, which was allegedly recovered from the accused-appellant, [was] never authenticated for the reason that the arresting officers failed to comply with the rules on chain of custody of evidence.[13]

Our Ruling

There is no merit in the appeal.

Elements for the Prosecution of Illegal Sale of Shabu

In a prosecution for illegal sale of dangerous drugs, the following elements must concur: "(1) the identity of the buyer and the seller, the object, and consideration; and, (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti."[14]

In the case at bench, the prosecution was able to prove all the essential elements of illegal sale of shabu. Appellant was positively identified by the prosecution witnesses as the person who sold the shabu presented in court. SPO2 Male, the poseur-buyer, testified that he bought the shabu from appellant during a legitimate buy-bust operation. SPO2 Male narrated the circumstances leading to the consummation of the sale of illegal drugs and the arrest of appellant:

> Q. When that civilian informant came to your office in the afternoon of May 13, 2002, what if any information did he bring?
>
> A. Our civilian informant informed our team leader that he knows of someone who is offering shabu for sale and that person is his acquaintance, sir.
>
> x x x x
>
> Q. What other informations, [aside from] the fact that a person was willing to sell shabu at P1,000.00 per gram, did the informant give to the team leader by way of briefing?
>
> A. In his briefing the name Jun from Marikina was mentioned, sir.
>
> x x x x
>
> Q. x x x You said that your civilian informant talked for 30 minutes, what happened after 30 minutes?
>
> A. P/Inspt. Ablang instructed the civilian informant to call this alias Jun because he knew the cellphone number, sir.
>
> x x x x
>
> Q. And how long did they talk?
>
> A. For about two or three minutes and then he gave the cellphone to me because I was assigned to act as poseur-buyer, sir.

Q. Were you able to talk to that person at the other end of the line?

A. Yes, sir.

x x x x

A. I told him that I am in the business of selling shabu and then I bargained for the price of the shabu, sir.

Q. How much did you quote with respect to the price?

A. I told him that in order for me to earn, I [bargained] for the price of P170,000.00 for 200 grams, sir.

x x x x

Q. Where in San Pedro are [sic] you going to meet?

A. He told me that it would be easier that we meet in Shakey's Pacita Complex, sir.

Q. What about the time, what was the agreement?

A. He did not give the exact time but he told me that he [would] be [there] late in the afternoon, sir.

Q. x x x what if any did your team leader do?

A. After that, P/Inspt. Ablang gave me a P1,000 bill x x x which I x x x initial[ed] and placed x x x on top of a boodle money x x x inside an envelope[. W]e also talked about the buy-bust operation, sir.

Q. Since this is a buy-bust operation, who is supposed to be the poseur-buyer?

A. I would act as the poseur-buyer, sir.

Q. What about the back-up team?

A. It would be PO3 Marino Garcia, sir.

Q. What about any other arrangement?

A. We agreed that I will use a car and then I will let the suspect board the same and if the transaction was done, I will put on the hazard light as a sign of the consummation of the transaction, sir.

x x x x

Q. And past 3:00 in the afternoon, where did you proceed?

A. We [were] still in the office at that time and it was about 5:00 in the afternoon x x x when we x x x proceed[ed] to the area, sir.

x x x x

Q. On the first vehicle, how many persons were riding including the driver?

A. On board the first vehicle were I and the civilian informant, sir.

Q. What about in the second car?

A. They were three, sir x x x P/Inspt. Ablang, PO3 Garcia and SPO3 Atienza.

Q. What time did you arrive in Pacita Complex?

A. It was already past 6:00 in the evening, sir.

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x x x x

Q. And what was your first step upon reaching Pacita Complex?

A. I parked near the Shakey's and I told our civilian informant to call up Jun, sir.

x x x x

Q. What if any did your civilian informant tell you when he was able to contact Jun?

A. That according to Jun to just wait for him and he will be coming, sir.

x x x x

Q. And what happened after that?

A. At about 6:45 in the evening, our civilian informant alighted from the car and waited outside for the arrival of Jun, sir.

x x x x

Q. You said that you saw a person that your civilian informant was talking to, when for the first time did you observe that your civilian informant was talking to a person after he alighted?

A. After five minutes because the window of the car was [open], sir.

Q. After five minutes was over, when you noticed that the two were talking, what happened?

A. After that our civilian informant asked Jun to board our car[.] x x x Jun sat in [the] front [seat] while our civilian informant sat at the back x x x, sir.

Q. And what transpired between you and that person who was introduced to you as Jun inside the car?

A. After our civilian informant introduced Jun to me, I told Jun that we have the same line of business and I asked him if he has x x x with him the item, sir.

Q. What is this item that you are referring to?

A. Shabu, sir.

Q. And what did this person do when you asked him if he has with him the item?

A. He also asked me if I have with me the money, sir.

Q. And how did you answer him?

A. I told x x x him that I have with me the money and I even showed to him the envelope, sir.

Q. And what happened after you showed to him the envelope?

A. x x x he said "kaliwaan tayo, isasara ko lang and bintana," sir.

x x x x

Q. And what happened after he closed the window?

A. x x x he handed to me a clutch bag, sir.

Q. What did you do in return after the clutch bag was handed to you?

A. I told him if I can examine the contents to determine the quality, sir.

Q. And what was the reaction of Jun?

A. He told me to first give the money to him, sir.

Q. And what did you do?

A. I told him that I will first examine the items because he might run away, sir.

x x x x

Q. What did you do when he agreed to have you examine the items?

A. I opened the clutch bag [containing] two plastic bags x x x [with] white crystalline substance, sir.

Q. And how big were these plastic bags?

A. The same size [as] the tape recorder used by the stenographer, sir (about 2x4 inches).

x x x x

Q. Just a few seconds earlier, I heard you [say] that even at Pacita Complex upon arrival of P/Inspt. Ablang, you turned over to him the plastic bags with white crystalline substance, how did it [happen] that in your office at Camp Vicente Lim, you were able to mark those items with your initials?

A. Because when we arrived at our office, P/Inspt. Ablang brought the items while we [were] preparing the complaint, sir.

x x x x

Q. You said that you placed your [initial] on the two plastic bags, from your office did you come to know where these items were brought?

A. After we prepared the complaint, I was the one who personally brought the items to the crime laboratory for examination, sir.

x x x x

Q. On page 13 of the record is a copy of the Memorandum for the Chief PNP Crime Laboratory which was previously marked as Exhibit 3 for the defense, please go over this and tell us if your signature is found on that document?

A. Yes, sir.[15]

PO3 Garcia corroborated the testimony of SPO2 Male on relevant points. He testified as follows:

Q. So, you were following behind them and you arrived at about 6:30 P.M. at Pacita Complex[. W]hat happened next after your arrival?

A. After our arrival, we strategically positioned ourselves at Shakey's Food Chain wherein I [as] back-up and x x x arresting officer could x x x actually observe the x x x transaction between the poseur-buyer and the suspect, sir.

Q. By that time, you have no way of knowing who x x x was going to sell or dispose of illegal drugs?

A. During our planning, sir.

Q. What was discussed during the planning regarding the physical description of that person?

A. The physical description was disseminated to each and every member based [on] the description given by

the confidential informant, sir.

Q. So, what happened next after you posted yourself to observe whatever transaction x x x may be consummated between SPO2 Male and the seller of illegal drugs?

A. On or about 6:45 or 1845 [hours], we saw a man [enter] x x x the car wherein SPO2 Male and the confidential informant [were] positioned, sir.

x x x x

Q. How far were you from the person when you first saw him that evening?

x x x x

A. x x x we were approximately 10 to 15 meters away from them, sir.

Q. Did you step [outside] the car that you were riding, or you were just inside?

A. Actually, we were not inside the car [at] that particular time, we acted as x x x ordinary passers-by at the place, sir.

x x x x

Q. What happened after that person entered the car of SPO2 Male?

A. After 5 to 10 minutes, we observed that the pre-arranged signal was given already by the poseur-buyer by [switching] on the hazard light of that car, sir.

x x x x

Q. What did you do as back-up after you saw that the pre-arranged signal in the form of the hazard light was turned on by SPO2 Male?

x x x x

A. I immediately opened the right front door of the car and informed the person inside the car particularly the suspect that we [are] policemen and [are arresting him] for [violating] certain provision[s] [of] R.A. 6425[. We likewise] immediately informed him of his constitutional rights, sir.

x x x x

Q. So, aside from informing that person who entered the car driven by SPO2 Male regarding his constitutional rights, x x x what else, if any, did you do?

A. We effect[ed] the consented search [during which] we recovered the white paper envelope [containing] the boodle money and the original One Thousand Peso Bill x x x sir.

x x x x

Q. And you mentioned a while ago that what was recovered from the accused was a single sachet?

A. The only item I recovered from the suspect was the boodle money as arresting officer, ma'am.[16]

During his re-direct examination, PO3 Garcia corrected and clarified his testimony while on direct examination that he recovered from appellant only one sachet of shabu. He testified that two sachets of shabu were recovered from appellant. Thus:

Q. Can you please reconcile your apparent contradicting statements wherein you previously stated that you recovered from SPO2 Male one (1) transparent plastic sachet of shabu, whereas in the information you said

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there were two (2) transparent plastic sachets of shabu x x x?

A. Yes, sir. During the initial direct examination, I humbly admit that I made a mistake.

Q. In what way did you make a mistake?

A. I thought it was only one (1) plastic sachet but I [found] out later based (on) our record that [there were] two (2) plastic sachets, sir.[17]

Forensic Chemist Huelgas, who examined the confiscated crystalline substance with a quantity of 206.09 grams, found the same to be positive for methamphetamine hydrochloride or shabu. This finding is contained in Chemistry Report No. D-998-02.[18]

The Trial Court's Findings on the
Credibility of Witnesses are Afforded
Great Respect

Appellant contends that it is his testimony and not the statements under oath of the prosecution witnesses that should be the basis in determining the outcome of his case. This contention, however, must fail in view of the established rule that "findings of the trial courts that are factual in nature and which 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. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds even more stringent application where said findings are sustained by the [appellate court]."[19]

The trial court, as sustained by the CA, found that the testimonies of SPO2 Male and PO3 Garcia were unequivocal, definite and straightforward. Their testimonies were consistent in material respects with each other and the physical evidence. Collectively, the prosecution's evidence proved beyond reasonable doubt the crime charged.

There Must be Evidence of Improper
Motives on the Part of the Arresting Officers

Moreover, appellant failed to proffer clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. It was not proven that the police officers "were impelled by improper motives to testify against him. There is, therefore, no basis to suspect the veracity of their testimonies."[20]

Appellant's denial and allegation that he was a victim of frame-up by the arresting officers in their attempt to extort money in exchange for his freedom is implausible. We have invariably viewed with disfavor the defenses of denial and frame-up for such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence.[21]

In this case, if the police officers indeed tried to extort money from

appellant, he should have filed the proper charges against them. The fact that no administrative or criminal charges were filed lends cogency to the conclusion that the alleged frame-up was merely concocted as a defense scheme. This inaction clearly betrays appellant's claim of frame-up.

The Inconsistencies in the Testimonies
of the Prosecution Witnesses are Trivial

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Appellant contends that the trial court and the CA erred in relying on the testimonies of SPO2 Male and PO3 Garcia which were replete with serious contradictions. He claims that there are irreconcilable inconsistencies in their respective accounts of the buy-bust operation. He referred to statements of both police officers as to: (1) the conduct of the confidential informant while allegedly waiting for him at the designated meeting place; (2) who got hold of the boodle money after his arrest; (3) the length of time the briefing for the entrapment operation was held; (4) the size of the sachets and the color of the shabu contained therein; and, (5) the person who brought the shabu to the crime laboratory.

Unfortunately for the appellant, "[f]or a discrepancy or inconsistency between the testimonies of witnesses to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused x x x. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused."[22]

Here, the inconsistencies mentioned by appellant refer to trivial matters and are clearly beyond the elements of illegal sale of shabu since the same do not pertain to the actual buy-bust itself - that crucial moment when appellant was caught selling shabu.[23]

Furthermore, minor inconsistencies do not negate or dissolve the eyewitnesses' positive identification of the appellant as the perpetrator of the crime.[24] "[M]inor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable. Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. x x x Witnesses are not expected to remember every single detail of an incident with perfect or total recall."[25] "The witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime."[26]

The Presentation of the Informant
is not Indispensable

We are not impressed with appellant's argument that his conviction was unwarranted due to the non-presentation of the informant who allegedly told the police that he was a drug pusher. The presentation of an informant is not a requisite in a prosecution for drug cases.[27] "The failure of the prosecution to present the informant does not vitiate its cause as the latter's testimony is not indispensible to a successful prosecution for drug-pushing, since his testimony would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug. Failure of the prosecution to produce the informant in court is of no moment, especially when he is not even the best witness to establish the fact that the buy-bust operation has indeed been conducted."[28]

Here, SPO2 Male, as poseur-buyer, testified in clear, concise and candid manner on the circumstances regarding the illegal sale of shabu made by appellant. He contacted appellant by cellular phone to verify the report that the latter was engaged in drug pushing and to arrange the sale of 200 grams of shabu for P170,000.00. After his conversation with appellant, the buy-bust team proceeded to the designated place. The confidential informant introduced him to appellant, who admitted being the same person he transacted with over the cellular phone for the illicit purchase of the shabu. Appellant proceeded to give him the shabu. As payment, he gave the marked money and boodle money to the appellant. After the consummation of the sale, appellant was arrested.

The Failure to Present the
Marked Money is not Fatal

We are likewise not impressed with the appellant's contention that the failure to present the marked money was

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fatal to the case against him. "The marked money used in the buy-bust operation is not indispensable in drug cases; it is merely corroborative evidence."[29] In prosecuting a case for the sale of dangerous drugs, the failure to present "marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation."[30]

The Chain of Custody in Handling the
Shabu Allows Flexibility

In a final attempt to exonerate himself, appellant asserts that the police operatives failed to comply with the proper procedure on chain of custody of the evidence. He claims that there is no assurance that the sachets seized during the buy-bust operation were the same items marked by SPO2 Male upon his arrival in Camp Vicente Lim. There was also uncertainty that the sachets marked by SPO2 Male were the same items forwarded to the receiving clerk of the crime laboratory and then to the forensic chemist.

The assertion must fail.

A thorough review of the records reveals that there is no broken chain in the custody of the seized items, later on determined to be shabu, from the moment of their confiscation by the buy-bust team, to their turn-over at the police station, to the time same were brought to the forensic chemist for examination, and their subsequent presentation in court during trial. It was duly established by documentary, testimonial, and object evidence, including the markings on the plastic sachets containing the shabu, that the substance examined by the forensic chemist was the same as that taken from appellant.[31]

Dangerous Drugs Board Regulation No. 3, Series of 1979, which provided the procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs at the time of the commission of the crime of illegal sale of shabu, reads:

> Subject: Amendment of Board Resolution No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.
>
> [x x x x]
>
> SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure and confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter, the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.
>
> The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation.[32]

While it appears that the buy-bust team failed to comply strictly with the procedure outlined above, the same does not overturn the presumption of regularity in the performance of their duty. A violation of the regulation is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the

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prosecution of the criminal case since the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established and the prosecution thereof is not undermined by the arresting officers' inability to conform to the regulations of the Dangerous Drugs Board.[33]

Further, 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.[34] Appellant failed to prove the presence of these instances to overcome said presumption.

The Proper Penalty

All told, we find no reason to disturb the findings of the trial court, as affirmed by the appellate court, that appellant is guilty beyond reasonable doubt of illegal sale of a dangerous drug, as defined and penalized under Section 15, Article III of RA 6425, as amended.

Under Section 15, Article III, in relation to Sec. 20, Article IV, of RA 6425, as amended by RA 7659, the penalty prescribed for unauthorized sale of 200 grams or more of shabu or methamphetamine hydrochloride is reclusion perpetua to death and a fine ranging from P500,000.00 to P10 million pesos.[35]

Here, the report of the forensic chemist shows that the two plastic sachets contained a total weight of 206.09 grams. With the quantity of the shabu exceeding the weight of 200 grams, the proper penalty should be reclusion perpetua to death. Since the penalty of reclusion perpetua to death consists of two indivisible penalties, appellant was correctly meted the lesser penalty of reclusion perpetua, conformably with Article 63(2) of the Revised Penal Code that when there are no mitigating or aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. As to the fine, considering that the amount of shabu sold was 206.09 grams, we find the amount of P500,000.00 imposed by the trial court as reasonable.[36]

WHEREFORE, the Decision of the Court of Appeals, which affirmed in all respects the Decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, convicting Marianito Gonzaga y Jomaya for violation of Section 15, Article III of Republic Act No. 6425, as amended by Republic Act No. 7659, and sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the fine of P500,000.00, is AFFIRMED in toto.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

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[1] See Republic Act No. 9165, Section 1.

[2] See People v. San Juan, 427 Phil. 236, 247-248 (2002).

[3] Records, p. 1.

[4] Also spelled as "Ablan" in some parts of the records.

[5] Records, p. 14.

[6] Id. at 286; penned by Judge Stella Cabuco-Andres.

[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[8] CA rollo, pp. 152-174; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Josefina Guevarra-Salonga and Vicente Q. Roxas.

[9] Id. at 174.

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[10] Id. at 44-94.

[11] Id. at 62.

[12] Rollo, pp. 38-66.

[13] Id. at 46-47.

[14] People v. Macatingag, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 361-362.

[15] TSN, December 9, 2002, pp. 4-13.

[16] TSN, October 21, 2002, pp. 11-26.

[17] TSN, November 27, 2002, p. 3.

[18] Supra note 5.

[19] People v. Macatingag, supra note 14 at 366.

[20] Id.

[21] People v. Lazaro, Jr., G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[22] Id. at 272.

[23] Id.

[24] People v. Daen, Jr., 314 Phil. 280, 292 (1995).

[25] People v. Alas, G. R. Nos. 118335-36, June 19, 1997, 274 SCRA 310, 320.

[26] People v. Cruz, G.R. No. 185381, December 16, 2009, 608 SCRA 350, 364.

[27] People v. Ho Chua, 364 Phil. 497, 513 (1999).

[28] People v. Naquita, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446.

[29] People v. Tion, G.R. No. 172092, December 16, 2009, 608 SCRA 299, 321.

[30] People v. Concepcion, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 441-442.

[31] People v. Naelga, G.R. No. 171018, September 11, 2009, 599 SCRA 477, 493.

[32] Cited in People v. Kimura, 471 Phil. 895, 918 (2004).

[33] People v. Naelga, supra note 31 at 495.

[34] Id. at 497.

[35] See also Ching v. People, G.R. No. 177237, October 17, 2008, 569 SCRA 711, 736.

[36] Id. at 736-737.

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