

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JAY LORENA Y LABAG, APPELLANT.

G.R. No. 184954. January 10, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

The instant appeal assails the Decision[1] dated November 22, 2007 of the Court of Appeals (CA) in CA-G.R. CR HC. No. 01620 which affirmed with modification the August 30, 2005 judgment[2] of the Regional Trial Court (RTC), Branch 25, of Naga City, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

In an Information[3] dated July 10, 2003, appellant Jay Lorena y Labag was charged as follows:

That on or about February 9, 2003, at about 7:30 o'clock (sic) in the evening, at Pier Site, Sta. Rosa, Pasacao, Camarines Sur, and within the jurisdiction of the Honorable Court, the above-named accused, did then and there, willfully, unlawfully, criminally and knowingly sell Methamphetamine Hydrochloride, with a total weight of 0.21 gram[,] a dangerous drug, contained in a plastic sachet, to a poseur[-]buyer, without authority of law, and one (1) Five Hundred Peso bill with serial number MS [979614][4] was confiscated from the accused, to the damage and prejudice of the People of the Philippines.

ACTS CONTRARY TO LAW.

During pre-trial, the prosecution and defense stipulated on the following facts:

- Identity of the accused;
- That the arresting officers were organic members of the PNP Pasacao, Camarines Sur;
- That the accused was within the premises of [P]ier [S]ite, Sta. Rosa, Pasacao, Camarines Sur on February 9, 2003 at around 7:30 o'clock (sic) in the evening; and
- That the accused knew a certain Iris Mae Cleofe.[5]

When arraigned, appellant pleaded not guilty.[6] In the ensuing trial, the prosecution presented seven witnesses: P/Insp. Mauro E. Solero, SPO1 Constantino Espiritu, SPO2 Ernesto Ayen, P/Insp. Josephine Macura Clemen, P/Insp. Ma. Cristina Nobleza, Police Chief Insp. Jerry Bearis, and P/Insp. Nelson del Socorro. Taken altogether, the evidence for the prosecution tried to establish the following facts:

On February 9, 2003, around 8:00 in the morning, Iris Mae Cleofe (Iris), a civilian informant, came to the Pasacao Police Station to report appellant's alleged drug trafficking activities. Acting on said information, Pasacao Police Station Officer-in-Charge Police Chief Insp. Jerry Bearis (Bearis) directed P/Insp. Mauro E. Solero (Solero), SPO3 Tomas Llamado, SPO3 Oscar Angel, SPO2 Ernesto Ayen (Ayen) and SPO1 Constantino Espiritu (Espiritu), all members of Task Force Ubash, a unit charged with monitoring drug trafficking activities in the area, to go with Iris and conduct a surveillance upon appellant. Around 5:00 in the afternoon, after their surveillance

yielded a positive result, Task Force Ubash coordinated by phone with the Philippine Drug Enforcement Agency (PDEA) Office in Naga City for the conduct of the buy-bust operation which will take place that same night at the house of one Edgar Saar (Saar) located in Pier Site, Pasacao. Thereafter, Solero, Commander of Task Force Ubash, gave a briefing to the members of the buy-bust team. They were likewise instructed to synchronize their watches because at exactly 7:30 in the evening, they will enter the place immediately after Iris, the designated poseur-buyer, utters the words "Uya na ang bayad ko" (Here is my payment) as a signal that the transaction has been perfected.

Around 7:00 in the evening, when it was already dark, the buy-bust team arrived in the area and positioned themselves in front of the house of Saar. They were approximately five meters away hiding in the dark behind the plants but had a good view of the well-lit porch of Saar's house. Moments later, Iris arrived and entered Saar's house. She immediately proceeded with the transaction and handed over the marked P500-bill to appellant who was then sitting down. While handing over the money, Iris uttered the words "O, uya na an bayad ko kaiyan ha, baad kun wara-waraon mo iyan, uya na an bayad ko ha" (This is my payment, you might misplace it), her voice deliberately made louder for the buy-bust team to hear. Simultaneously, appellant handed over a plastic sachet containing white crystalline substance to Iris. At that point, Solero, Espiritu and Ayen rushed to the porch, arrested appellant and handcuffed him. Ayen recovered from appellant's pocket the P500-bill while Iris turned over the sachet of shabu to Espiritu. Then they brought appellant to the police station where he was detained. The sachet containing white crystalline substance was thereafter personally submitted by Bearis to the Camarines Sur Provincial Crime Laboratory, where it was tested by P/Insp. Ma. Cristina D. Nobleza.

The initial field test showed that the white crystalline substance contained in the sachet was Methamphetamine Hydrochloride or Shabu. Thus, it was submitted to the PNP Regional Crime Laboratory Office 5 for confirmatory testing by P/Insp. Josephine Macura Clemen, a forensic chemist. There, the specimen likewise tested positive for Methamphetamine Hydrochloride.

The defense, for its part, presented an entirely different version. Testifying as sole witness for the defense, appellant tried to establish the following facts:

During the first week of February 2003, appellant, a resident of San Felipe, Naga City, went to Pasacao to find a job. While in Pasacao, he stayed in the house of his friend Saar, in Pier Site.

On February 9, 2003, around 7:00 in the evening, while appellant was lying on a hammock near Saar's residence, he saw Iris enter the yard and go into Saar's house. A little later, she went out of the house so appellant asked her who she was looking for. Iris replied that she was looking for one Bongbong Ditsuso. Appellant told Iris to just wait for Bongbong inside the house. In the meantime, he went to the kitchen to cook rice. A little while later, he returned to the living room to talk to Iris. While they were talking, several men barged in and Iris suddenly gave him something which he later found out to be crumpled money when it fell on the floor. The men then handcuffed him after punching him and hitting him with a Caliber .45 in the nape. Afterwards, they boarded him on an owner-type jeep and brought him to the police station where he was detained.

On August 30, 2005, the RTC promulgated its judgment finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentencing him to life imprisonment. The fallo reads:

WHEREFORE, in view of the foregoing disquisition, judgment is hereby rendered finding accused JAY LORENA y Labag, guilty beyond reasonable doubt for Violation of Sec. 5, ... [Article] II of R.A. 9165. This court hereby sentences him to suffer the penalty of life imprisonment.

Since the accused has been undergoing preventive detention during the pendency of the trial of this case, let the same be credited in the service of his sentence.

SO ORDERED.[7]

The trial court found the prosecution evidence credible and sufficient to prove appellant's culpability beyond reasonable doubt. It held that even if the prosecution failed to present the poseur-buyer by reason of her death, her failure to testify was not fatal to the prosecution's evidence since prosecution witnesses Solero, Espiritu and Ayen were able to observe the transaction between Iris and appellant, and the shabu and buy-bust money recovered from him were presented as evidence to prove the sale. The trial court also ruled that the police officers are presumed to have performed their duties in a regular manner in the absence of evidence that they were motivated by spite, ill will, or other evil motive. The trial court did not give credence to appellant's defense of denial, frame-up and maltreatment. It held that his claim cannot prevail over the positive identification made by credible prosecution witnesses and in light of the presumption of regularity in the performance of duties of law enforcers.

Appellant appealed to the CA. In his brief, appellant alleged that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY [OF] VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165 [DESPITE] THE FAILURE OF THE PROSECUTION TO PROVE THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.[8]

On November 22, 2007, the CA rendered a decision affirming with modification the RTC decision and disposing as follows:

WHEREFORE, judgment is hereby rendered AFFIRMING WITH MODIFICATION the Judgment of the Regional Trial Court of Naga City, Branch 25. Appellant Jay Lorena y Labag is found GUILTY beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

Since the accused has been undergoing preventive detention during the pendency of the trial of this case, let the same be credited in the service of his sentence.

SO ORDERED.[9]

Aggrieved, appellant filed the instant appeal.

On December 15, 2008, the Court directed the parties to file their respective supplemental briefs if they so desire.[10] The Office of the Solicitor General manifested[11] that it is dispensing with the filing of a supplemental brief as it finds no new issues to raise before this Court. Appellant, on the other hand, in addition to the lone assignment of errors he raised before the CA, raised the following errors in his Supplemental Brief:

I

THE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE PROSECUTION FAILED TO PROVE THE BUY-BUST TEAM'S COMPLIANCE WITH THE PROVISIONS OF SECTION 21, R.A. NO. 9165.

II

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[12]

Appellant questions the validity of his warrantless arrest, contending that none of the circumstances provided under Section 5, Rule 113 of the Revised Rules of Criminal Procedure, as amended, which justify a warrantless arrest is present. He likewise points out that the non-presentation of the poseur-buyer coupled with the inconsistencies in the testimonies of the prosecution witnesses and their testimony to the effect that they did not

see the sale itself, taint the credibility of the buy-bust operation. He adds that the lower court misapplied the presumption of regularity in the performance of official function, especially since the arresting officers failed to comply with the guidelines prescribed by the law regarding the custody and control of the seized drugs as mandated by Section 21, R.A. No. 9165.

We reverse appellant's conviction.

In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the corpus delicti, i.e., the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction.[13]

Further, considering the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise, there is a need to comply strictly with procedure in its seizure and custody.[14] Section 21, paragraph 1, Article II of R.A. No. 9165 provides such procedure:

(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.)

Evident from the records of this case, however, is the fact that the members of the buy-bust team did not comply with the procedure laid down in Section 21 of R.A. No. 9165. Nothing in the testimony of Solero, Commander of Task Force Ubash, would show that the procedure was complied with. He even admitted that he has not seen the inventory of the confiscated drugs allegedly prepared by the police officers and that he only read a little of R.A. No. 9165:

Q

Now, Mr. Witness, did you prepare an inventory insofar as the apprehension of the shabu allegedly taken from the suspect?

A

That is the work of the Investigator, sir, we were just after the buy-bust operation.

Q

Was there any inventory prepared insofar as the operation is concerned?

A

Yes, sir.

Q

Where is that inventory?

A

At the Investigation Section, sir.

Q

Are you sure that there was indeed an inventory prepared?

A

Yes, sir.

Q

So, you are telling this court that the shabu that was allegedly taken from Jay Lorena was endorsed to the Investigation Section?

A

To the desk officer on duty first for the recording.

Q

Do you know what is investigation, Mr. Witness?

A

The details, the money involved including the suspect.

Q

This case was filed in the year 2003 and I suppose you are already aware of Rep. Act No. 9165 or the Comprehensive Dangerous Drugs Act?

A

Yes, sir.

Q

And the persons who prepare the inventory are the persons who apprehended, are you aware of that?

A

Yes sir, but the desk officer is also a member of the police station.

Q

So, you turned over the shabu to the desk officer?

A

Yes sir, including the suspect.

Q

And to your own knowledge, there was an inventory prepared by the desk officer?

A

The Investigation Section, sir.

Q

And in that inventory, Insp. Del Socorro signed?

A

No, sir.

Q

Or the local elected official signed that inventory?

A

I did not see the inventory, sir.

Q

So, you are talking about a particular document which you have not seen?

A

But I know it was inventoried.

Q

Now, during the supposed buy-bust operation, upon apprehending Jay Lorena and the shabu that your group allegedly taken from him, was there any photograph taken?

A

None, sir.

Q

Was there any police officer from the Pasacao Police Station or even the Chief of Police himself instructed your group about the requirements prescribed under Rep. Act No. 9165?

A

None, sir.

Q

But personally you are aware of Rep. Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act?

A

Yes, sir.

Q

Have you read that?

A

A little.[15]

Nonetheless, *People v. Pringas*[16] teaches that non-compliance by the apprehending/buy-bust team with Section 21 is not necessarily fatal. Its non-compliance will not automatically render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[17] We recognize that the strict compliance with the requirements of Section 21 may

not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.[18] As provided in Section 21, Article II of the Implementing Rules of R.A. No. 9165:

SECTION 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, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

x x x x (Emphasis and underscoring supplied.)

Even so, for the saving clause to apply, it is important that the prosecution should explain the reasons behind the procedural lapses and that the integrity and evidentiary value of the evidence seized had been preserved.[19] It must be shown that the illegal drug presented in court is the very same specimen seized from the accused. This function is performed by the "chain of custody" requirement to erase all doubts as to the identity of the seized drugs by establishing its movement from the accused, to the police, to the forensic chemist and finally to the court.[20] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines "chain of custody" as follows:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.][21]

In this case, there was no compliance with the inventory and photographing of the seized dangerous drug and marked money immediately after the buy-bust operation. We have held that such non-compliance does not necessarily render void and invalid the seizure of the dangerous drugs. There must, however, be justifiable grounds to warrant exception therefrom, and provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/s.[22] While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange. Hence, every link must be accounted for.[23]

Prosecution witnesses Solero, Ayen and Espiritu were united in testifying that after the consummation of the transaction and immediately upon appellant's apprehension, Iris turned over the plastic sachet to Espiritu. It was likewise clear that Espiritu turned over to Solero the specimen allegedly seized from appellant at the police

station.

However, as to the subsequent handling of said specimen at the police station until it was presented in court, the prosecution failed to clearly account for each link in the chain due to the vagueness and patent inconsistencies in the testimonies of the prosecution witnesses.

Solero testified that after he got hold of the specimen, the same was turned over to the desk officer whose name he cannot remember.[24] During his direct examination, he promised that he will find out who the desk officer was during that particular day.[25] He however failed to name the said desk officer when he came back on another hearing date for his cross examination and still referred to him or her as "the desk officer on duty." [26] And when asked what their office did to the specimen, he declared that what he knows is that it was brought to the provincial crime laboratory for testing but cannot remember who brought it to the provincial crime laboratory.[27]

Bearis, on the other hand, testified that it was he who brought the specimen to the provincial crime laboratory and when asked from whom he got the specimen, he stated that it was Solero who handed it over to him (Bearis).[28] He identified in court that it was the same specimen he brought to the provincial crime laboratory since it had the marking "MES," presumably corresponding to the initials of Solero, and claimed that it was marked in his presence.[29] There was no evidence to show, however, if Solero indeed made said marking in the presence of Bearis since there was no mention of this when Solero testified. We find Solero's failure to mention the supposed marking as consistent with his claim that he turned over the specimen to the unidentified desk officer and not to Bearis. It is thus unclear whether after Solero, the next person who came into possession of the specimen was the unidentified desk officer OR Bearis, given the latter's testimony that he directly got the same from Solero.

Also unaccounted for is the transfer of the specimen from the provincial crime laboratory to the regional crime laboratory. Nobleza, who received the specimen from Bearis and conducted the initial field test on it, testified that after the examination and preparing the result, she turned over the same to the evidence custodian, SPO3 Augusto Basagre.[30] Clemen, the chemist who conducted the confirmatory test at the regional crime laboratory, testified that she received the specimen from one P/Insp. Alfredo Lopez,[31] Deputy Provincial Officer of the Provincial Crime Laboratory, the signatory of the memorandum for request for laboratory examination.[32] The prosecution failed to present evidence to show how the specimen was transferred from Basagre to Lopez.

Given the foregoing lapses committed by the apprehending officers, the saving clause cannot apply to the case at bar. Not only did the prosecution fail to offer any justifiable ground why the procedure required by law was not complied with, it was also unable to establish the chain of custody of the shabu allegedly taken from appellant. The obvious gaps in the chain of custody created a reasonable doubt as to whether the specimen seized from appellant was the same specimen brought to the crime laboratories and eventually offered in court as evidence. Without adequate proof of the corpus delicti, appellant's conviction cannot stand.

As a result of the irregularities and lapses in the chain of custody requirement which unfortunately the trial and appellate courts overlooked, the presumption of regularity in the performance of official duties cannot be used against appellant. It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.[33]

WHEREFORE, we hereby REVERSE and SET ASIDE the November 22, 2007 Decision of the Court of Appeals in CA-G.R. CR HC. No. 01620. Appellant JAY LORENA y LABAG is ACQUITTED of the crime charged and

ordered immediately RELEASED from detention, unless he is confined for any other lawful cause/s.

The Director of the Bureau of Corrections is DIRECTED to IMPLEMENT this Decision with deliberate dispatch and to report to this Court the action taken hereon within five (5) days from receipt hereof.

With costs de oficio.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Sereno, JJ., concur.

[1] Rollo, pp. 2-9. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso concurring.

[2] Records, pp. 236-241. Penned by Judge Jaime E. Contreras.

[3] Id. at 1.

[4] Id. at 180.

[5] Id. at 43.

[6] Id. at 29.

[7] Id. at 241.

[8] CA rollo, p. 65.

[9] Rollo, p. 8.

[10] Id. at 15.

[11] Id. at 17-18.

[12] Id. at 24.

[13] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, p. 7, citing *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266.

[14] *People v. Kamad*, G.R. No.174198, January 19, 2010, 610 SCRA 295, 304-305.

[15] TSN, January 12, 2004, pp. 17-19.

[16] G.R. No. 175928, August 31, 2007, 531 SCRA 828.

[17] Id. at 842-843.

[18] *People v. Pagaduan*, supra note 13 at 10-11.

[19] *People v. Almorfe*, G.R. No. 181831, March 29, 2010, 617 SCRA 52, 60, citing *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

[20] *People v. Almorfe*, id. at 60-61, citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

[21] See *People v. Denoman*, G.R. No. 171732, August 14, 2000, 596 SCRA 257, 271.

[22] *People v. Almorfe*, supra note 19 at 59, citing Sec. 21(a), Art. II of the Implementing Rules and Regulations

of R.A. No. 9165.

[23] Id. at 61-62, citing *Malillin v. People*, supra note 20 at 633.

[24] TSN, January 9, 2004, pp. 14-15.

[25] Id. at 15.

[26] TSN, January 12, 2004, p. 17.

[27] TSN, January 9, 2004, p. 15.

[28] TSN, June 8, 2004, pp. 14-15.

[29] Id. at 13.

[30] Id. at 5.

[31] *Lauta* in the TSN.

[32] TSN, May 6, 2004, p. 5.

[33] *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140,156.

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