

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARNEL BENTACAN NAVARRETE, APPELLANT.

G.R. No. 185211. June 06, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Arnel Bentacan Navarette (appellant) assails the April 22, 2008 Decision[1] of the Court of Appeals (Cebu City) in CA-G.R. CR-M.C. No. 00484 which affirmed that of Branch 58 of the Regional Trial Court (RTC) of Cebu City convicting him of violating Section 5, Article II of Republic Act (R.A.) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002) -selling 0.05 grain of shabu.

The inculpatory portion of the March 14, 2005 Information indicting appellant reads:

That on or about the 12th day of March 2005, at about 4:15 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell deliver or give away to poseur buyer one (1) heal sealed transparent plastic pocket of white crystalline substance weighing 0.05 gram, locally known as shabu, containing methyl amphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[2]

Based on the documentary and testimonial evidence for the prosecution consisting of the testimonies of Police Chief Inspector Mutchit Salinas (Inspector Salinas),[3] Forensic Chemist of the Philippine National Police (PNP) Crime Laboratory in Cebu City, SPO1 Willard Selibio (SPO1 Selibio),[4] Elmer Abelgas (SPO1 Abelgas)[5] and PO2 Rene Labiaga (PO2 Labiaga),[6] all members of the PNP assigned at Police Station 6T Cebu City, the following version is established:

After conducting a quick surveillance operation to ascertain the veracity of a report made by a confidential agent/informant on March 12, 2005 about appellant's alleged drug-related activities, a team composed of the above-named prosecution witness, together with the informant, proceeded at 4:15 p.m. on even date to Magsaysay St., Barangay Suba, Cebu City to conduct a buy-bust operation against appellant.

On reaching Barangay Suba, the informant, who was designated as poseur-buyer and given a one hundred peso bill bearing Serial No. XT848358,[7] approached appellant at an alley near his house as the team members hid about eight meters away but within sight of the site where the two met.

As the informant-poseur-buyer handed the marked one hundred peso bill to appellant, the latter in turn handed to him a small plastic sachet containing white crystalline substance believed to be shabu. At that instant, the poseur-buyer executed the pre-arranged signal, and the team members rushed to the scene whereupon they arrested appellant after recovering the marked money and apprising him of his constitutional rights. The poseur-buyer thereupon turned over the plastic sachet containing shabu to SPO1 Selibio.[8]

With the seized items, the team members brought appellant to the Cebu City Police Station where P/Supt. Antonio

Lao Obenza prepared a memorandum dated March 12, 2005[9] addressed to the Regional Chief of the PNP Crime Laboratory in Cebu City requesting for a laboratory examination of the substance contained in the plastic sachet. The team members subsequently executed a Joint Affidavit[10] subscribed and sworn to on March 14, 2005 recounting the details of the operation leading to appellant's arrest.

Upon receipt of the letter-request and the plastic sachet also on March 12, 2005 at 5:20 p.m., Inspector Salinas, Forensic Chemical Officer of the PNP Crime Laboratory Office 7 in Cebu City, conducted a laboratory examination of the sachet's contents which disclosed the following findings, as recorded in Chemistry Report No. D-305-2005 dated March 13, 2005:[11]

SPECIMEN SUBMITTED:

"A"- One (1) heat-sealed transparent plastic packet, labeled with "ANB", containing 0.05 gram of white crystalline substance, placed in a small plastic pack, x x x

PURPOSE OF EXAMINATION:

To determine the presence of dangerous drugs.

FINDINGS:

Qualitative analysis conducted on the above-mentioned specimen gave POSITIVE result for the presence of Methylamphetamine hydrochloride. x x x

C O N C L U S I O N:

Specimen A contains Methylamphetamine hydrochloride, a dangerous drug. (emphasis and underscoring supplied)

Denying the accusation, appellant[12] gave his version as follows:

At around 2:00 p.m. on March 12, 2005, while he was working as a caretaker of two video carrera machines installed in the house of one Alice Tetet, police officers kicked the door of the house and arrested him, over his resistance, as the police officers demanded for coins from the proceeds of the machines. He was thereafter brought to the Office of the City Prosecutor before undergoing medical examination, and he was later brought to the Bagong Buhay Rehabilitation Center.

In fine, appellant claimed that the charge against him was fabricated.

By Decision[13] of March 28, 2006, the trial court found appellant guilty as charged, disposing as follows:

Foregoing considered, this court finds the accused GUILTY as charged, and hereby sentences him to suffer LIFE IMPRISONMENT and to pay a fine of P500,000.00.

The pack of dangerous drugs (Exh. B) shall be forfeited in favor of the state for proper disposition.

SO ORDERED.[14]

In affirming the trial court's decision, the Court of Appeals, by Decision of April 22, 2008, held that, contrary to appellant's claim, the chain of custody over the seized illegal drug consonant with the procedure laid down in Section 21 of R.A. No. 9165 had been preserved, the prosecution having clearly established that the plastic pack containing shabu was recovered by SPO1 Selibio, who handed it to SPO1 Abelgas who thereupon prepared the request for a laboratory analysis which PO1 Vicada delivered, together with the specimen, to the PNP Crime Laboratory.

The appellate court held too that the prosecution had amply proven that the plastic pack of shabu presented before the trial court was the same pack seized from appellant bearing the marking "ANB" and duly identified in court; and that the failure of the apprehending team to conduct a physical inventory and photograph of the seized drug is not fatal to sustain a conviction.[15]

In brushing aside appellant's frame-up defense as self-serving and uncorroborated, it noted that appellant failed to adduce evidence on the possible motive for the police officers to fabricate the charge against him.

Hence, the present appeal.

Owing to the built-in dangers of abuse that a buy-bust operation entails, the law prescribes specific procedures on the seizure and custody of drugs, independently of the general procedures geared to ensure that the rights of people under criminal investigation and of the accused facing a criminal charge are safeguarded.[16]

[B]y the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.[17] (underscoring supplied)

The records of the case indicate that even the basics of the outlined procedure in the custody of seized drugs was not observed. Consider the team members' Joint Affidavit executed and sworn to by them two days after the operation or on March 14, 2005, viz, quoted verbatim:

x x x x

- While positioning ourselves at a place where we can sufficiently see and observed the movement of my poseur buyer we saw the latter approached an amputated left arm man and after a brief transaction, the latter handed to our poseur buyer a small transparent plastic sachet, containing white crystalline substance, believed to be shabu, in exchange of our buy bust money;
- At this instance, our poseur [buyer] quickly executed our prearranged signal by placing his right hand on his head, prompting us to hurriedly rushed towards them and placed Arnel Navarette under arrest and recovered from his possession and control the buy bust money described above;
- After apprising him of his constitutional rights, we brought Arnel Navarette to our Station while the confiscated packet of white crystalline substance which our poseur buyer bought from him was later submitted for examination at the PNP Crime Laboratory 7.[18]

Consider too team member SPO1 Selibio's testimony viz:

PROSECUTOR ALEXANDER ACOSTA:

Q:

How far were you from the subject when you went to the place?

SP01 WILLARD SELIBIO:

A:

Approximately 8 meters.

Q:

So you could see the subject?

A:

Yes, sir.

x x x x

A:

The confidential agent was already instructed that after the transaction is completed the poseur buyer will have to place his right hand on the head as pre-arranger signal.

Q:

How did he approach the accused?

A:

He went to the subject and the transaction was going on considering that there was already an exchange of the buy bust money and the shabu.

x x x x

Q:

After that pre-arranged signal, what happened next?

A:

We rushed to the position of the subject then we arrested the said person after we recovered the buy bust money from the accused.

x x x x

Q:

What happened after that?

A:

We confiscated the said shabu and the buy bust money.

Q:

And then what happened?

A:

We arrested the said person and informed him of his constitutional rights.

x x x x

Q:

You said you got the items, to whom did you turn over the same?

A:

It was turned over to SPO1 Abelgas for him to make some request to the Crime Laboratory.

x x x x

Q:

Showing to you Exhibit "B" one heat-sealed plastic pack, tell this Honorable Court if this is the same shabu that was purchased at the time of the buy bust operation?

A:

Yes, sir.

Q:

How did you [know] that this [plastic pack] is the one?

A:

Because of the marked [sic].

Q:

What was the marking?

A:

Arnel B. Navarrete.[19] (emphasis and underscoring supplied)

There was thus a blanket declaration that the team members confiscated the shabu. The Public Prosecutor took pains to "supply" the vital detail of who marked the initials "ANB" on the plastic sachet allegedly obtained by the poseur-buyer from appellant. And when the marking of "ANB" was allegedly affixed to the sachet before the sachet was sent for testing to the crime laboratory was not indicated too.

Consider further the testimony of team leader SPO1 Abelgas:

PROSECUTOR ALEXANDER ACOSTA:

Q:

After that what happened?

A:

We rushed to the suspect and it was Selibio who recovered from the possession of the suspect the buy bust money and after that we arrested him and informed him of his constitutional rights and we brought him to the station including the shabu and submitted it to the PNP Crime Laboratory.

Q:

You said the poseur buyer was able to purchased [sic] pack of shabu to whom did the poseur buyer turn over the said shabu?

A:

To Selibio.

Q:

From the time of the arrest of the accused and the said shabu was turned over to Selibio, who was then in possession of the shabu from the place where you arrested the suspect up to your office?

A:

It was Selibio.

Q:

In your office what did you do then?

A:

We prepared a request for PNP Crime Laboratory for examination.

x x x x

Q:

How about the shabu that was purchased from the poseur buyer can you still identify the same?

A:

Yes, sir.

Q:

Showing to you this plastic pack, tell this Honorable Court if this is the same shabu.'

A:

Yes sir, this is the same.

Q:

How did you know that this is the same?

A:

Because of the markings.

Q:

What is the marking?

A:

A N B

Q:

Have you seen the markings?

A:

Yes, sir.[20] (emphasis and underscoring supplied)

PO2 Labiaga merely echoed that of SP01 Abelgas'.

Oddly, while SP01 Selibio claimed at the witness stand to have marked the sachet with "ANB," not one of his team mates related having seen him mark it. Serious doubts necessarily arise as to whether the sachet and its contents submitted for laboratory examination were the same as that claimed to have been taken from appellant.

Non-compliance with the procedure laid down in Sec. 21 of the Comprehensive Drugs Act of 2002 is not, of course, always fatal as the law admits of exceptions:

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground, therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Us non-compliance will not 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.[21] (citation omitted, underscoring and emphasis supplied)

The apprehending team in the present case has not, however, shown any justifiable ground to exempt it from complying with the legal requirements. To impose benediction on such shoddy police work, absent exempting circumstances, would only spawn further abuses.

In *People v. Orteza*,^[22] the Court did not hesitate to strike down the conviction of the therein accused for failure of the police officers to observe the procedure laid down under the Comprehensive Dangerous Drugs Law thus:

First, there appears nothing in the records showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim*, i.e., any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or 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. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. It negates the presumption that official duties have been regularly performed by the police officers.

In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the corpus delicti.

The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.

More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the shabu were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the corpus delicti. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the shabu.

IN FINE, the unjustified failure of the police officers to show that the integrity of the object evidence-shabu was properly preserved negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.^[23]

Appellant's contention that the apprehending police officers were gravely remiss in complying with the statutory requirements imposed under Section 21 is thus well-taken. His acquittal, on grounds of reasonable doubt, must follow.

WHEREFORE, the assailed decision of the Court of Appeals is REVERSED and SET ASIDE. For failure of the prosecution to prove his guilt beyond reasonable doubt, appellant, Arnel Bentacan Navarrete, is ACQUITTED of the crime charged.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, who is ORDERED to cause the immediate release of appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken thereon within ten (10) days from notice.

SO ORDERED.

Brion, Bersamin, Abad,[*] and Villarama Jr., JJ., concur.

[*] Additional member per Special Order No. 997 dated June 6, 201 1.

[1] Penned by Associate Priscilla Baltazar-Padilla, with the concurrence of Associate Justices Franchito Diamante and Florito Macalino; CA rollo, pp. 73-83.

[2] Records, p. 1.

[3] TSN. October 18, 2005, pp. 2-5.

[4] TSN, November 8, 2005, pp. 2-13

[5] TSN, November 22, 2005, pp. 2-8; December 6, 2005. pp. 2-8.

[6]TSN, December 13, 2005, pp. 2-8; January 17, 2006, pp. 2-8.

[7] Exhibit "D," records, p. 8.

[8] TSN, November 22, 2005, pp. 6-7.

[9] Exhibit "A," records, p. 43.

[10] Records, p. 4.

[11] Exhibit "C," id. at 44.

[12] TSN, March 14, 2006, pp. 1-12.

[13] Rendered by Judge Gabriel Ingles; records, pp. 53-56.

[14] Id. at 56.

[15] CA rollo, pp. 81-82.

[16] People v. Sanchez, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 208.

[17] People v. Tan, G. R. No. 133001, December 14, 2000, 401 Phil. 259, 273. citing People v. Pagaura, 334 Phil. 683 (1997) and People v. Gireng, 311 Phil 12 11995).

[18] Records, p. 4.

[19] TSN, November 8, 2005, pp. 5-7, 9.

[20]TSN, November 22, 2005, pp. 5-8.

[21] People v. Pringas, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843 citing People v. Sta. Maria. G.R. No. 171019, February 23, 2007, 516 SCRA 621.

[22] G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758-759.

[23] People v. Santos. Jr.. G.R. No. 175593, October 17, 2007, 536 SCRA 489, 505.

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