PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JENNEFER CARIN Y DONOGA @ MAE-ANN, APPELLANT.

G.R. No. 185378. September 27, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Jennefer Carin y Donoga (appellant) was charged before the Regional Trial Court (RTC) of Makati City for violation of Section 5, Article II of Republic Act (RA) No. 9165[1] allegedly committed as follows:

> That on or about the 27[th] day of November 2003, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero two (0.02) grams of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in consideration of one pc. (sic) one hundred (P100.00) pesos.
>
> CONTRARY TO LAW.[2]

From the evidence for the prosecution consisting of documentary evidence and the testimonies of witnesses PO3 Jay Lagasca (PO3 Lagasca), Ruel Mergal (Mergal) and Edgardo Lumawag (Lumawag), the following version is culled:

On the information of a confidential informant that appellant was selling shabu every afternoon "at Davila Street," the Makati City Anti-Drug Abuse Council (MADAC) coordinated with the Anti-Illegal Drug Special Operation Task Force (AIDSOTF) and the Philippine Drug Enforcement Agency (PDEA) to conduct a buy-bust operation. A joint task force appointed PO3 Lagasca as team leader, "MADAC Operative" Mergal as poseur-buyer, and "MADAC Operative" Lumawag as back-up arresting officer. With a P100.00 bill on which "AAM" representing the initials of Drug Enforcement Unit (DEU) Chief SPO4 Arsenio M. Mangulabnan was marked,[3] the team and the confidential informant walked toward appellant's residence at Davila Street, Barangay Santa Cruz, Makati City at 4:00 p.m. of November 27, 2003.[4]

After waiting at the street for five minutes, appellant "came out" upon which she was introduced by the informant to Mergal. Told that Mergal wanted to buy shabu, appellant "went inside the street" and "baka po [pumasok] sa bahay."[5] Appellant returned after two minutes and handed Mergal a plastic sachet of white crystalline substance. Mergal in turn gave her the marked bill and executed the pre-arranged signal[6] which drew PO3 Lagasca and Lumawag to approach them and arrest her.

Lumawag recovered the marked bill from appellant's left hand and, on PO3 Lagasca's instruction, Mergal marked on the plastic sachet "JCD" representing appellant's initials.[7]

The seized item was submitted for laboratory examination and found positive for shabu.[8] A drug test conducted on the urine sample of appellant also turned positive for the presence of shabu.[9]

Hence, the filing of the Information[10] against appellant.

Denying the charge against her, appellant, claiming that she was framed-up, gave the following version:

On November 27, 2003, at about 4:00 to 4:30 in the afternoon, as she was washing clothes beside her house which is located in a squatter's area "in the interior of Davila St.," two men in civilian clothes approached her and asked the whereabouts of her husband, to which she replied that he was at work. They then asked her if they could interrogate her outside, to which she replied that they could interrogate her right there and then.

One of the two men at once drew a gun from his waistline and pointed it at her, handcuffed and dragged her outside the squatters' compound and boarded her inside a white Toyota Revo where a number of MADAC operatives were laughing. They proceeded to South Avenue and stopped at the Makati Public Safety Authority (MAPSA) Office where one of the men alighted from the vehicle, went inside the office, and returned with a plastic sachet of shabu which he said was what they had bought from her.

She was thereafter brought to the DEU where she was questioned in the course of which an investigator produced a One Hundred Peso bill and the man who was interrogating her wrote something thereon.[11]

By Decision[12] of May 12, 2006, Branch 64 of the Makati City RTC convicted appellant, disposing as follows:

> WHEREFORE, in view of the foregoing, judgment is rendered finding the accused JENNEFER CARIN y DONOGA, guilty beyond reasonable doubt of the charge for violation of Section 5, Art. II, RA 9165, and sentencing her to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).
>
> The period during which the accused is detained shall be considered in her favor pursuant to existing rules.
>
> The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the one piece of plastic sachet of shabu weighing 0.02 gram subject matter of this case for said agency's appropriate disposition.
>
> SO ORDERED.

In convicting appellant, the trial court relied on the presumption of regularity in the performance of official functions of the police officers and discredited appellant's defense of frame-up.[13]

The Court of Appeals affirmed appellant's conviction by Decision[14] of June 27, 2008. Hence, the present appeal.

Both parties in their manifestations before this Court adopted their respective Briefs filed before the appellate court in lieu of Supplemental Briefs.

In her Brief,[15] appellant, contending that the prosecution failed to prove her guilt beyond reasonable doubt, raises, among other things, the operatives' failure to observe proper procedure in the conduct of the operation.[16]

The Court finds that, indeed, the prosecution failed to show that the police complied with Section 21, paragraph (1) of Article II of R.A. 9165[17] and with the chain of custody requirement under the Act. Thus, PO3 Lagasca admitted on cross-examination:

> ATTY REGALA:
>
> Q:
>
> Now, Mr. Witness, as team leader, you would know for a fact that in [an] operation like this, photographs are supposed to be taken in the presence of the suspect. Do you have any photograph, Mr. Witness, to show to the Court that you indeed abide[d] with the rule in conducting a narcotics operation?

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A:

None, sir.[18] (emphasis supplied)

In a prosecution for illegal sale of a prohibited drug, 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 body or substance of the crime that establishes that a crime has actually been committed.[19] Failure to comply with Section 21, paragraph (1) of Article II of RA No. 9165 and its implementing rules results, in certain cases such as in the present one, in failure to establish the existence of the crime.[20]

The nature of illegal drugs â”€ "indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise" â”€ requires that strict compliance with the proper procedure is enjoined.[21] In the present case, the buy-bust team failed to follow the mandatory[22] procedure.

In another vein, even the version of prosecution witness PO3 Lagasca does not jibe with prosecution witness Mergal's.

PO3 LAGASCA:

Q:

You also testified, Mr. Witness, that when the transaction was ongoing, you saw the accused entered her house?

A:

Yes, sir.

Q:

When she returned, she allegedly handed the shabu to your poseur buyer. Am I correct?

A:

No, sir. I just saw them exchanging something.

Q:

When you approached the suspect and arrested her, what was recovered?

A:

Eduardo Lumawag was able to recover from the left hand of the accused the buy bust money, sir.

Q:

Now, Mr. Witness, are you familiar with the [concept] of hot pursuit or search incidental to lawful arrest?

A:

Yes, sir.

Q:

Did you conduct search at the residence of alias Mae-Ann considering that you saw her entered (sic) her house getting something?

A:

We did not enter the house, sir.

Q:

Why did you not enter the house, there must be a truckload of shabu inside the house?

A:

Because when we arrested the accused, she got hysterical.

Q:

Despite alias Mae-Ann becoming hysterical, as a police officer, would it not be right for you to conduct the search? Just to find out or make sure?

A:

We were not able to do that sir, because there were already people coming.[23] (emphasis and underscoring supplied)

Thus, from the immediately-quoted testimony of PO3 Lagasca, he claimed to have seen appellant enter her house. But even Mergal who, together with the alleged informant, directly negotiated with appellant, did not categorically state that appellant entered her house; he merely said "baka . . . pumasok sa bahay."

Parenthetically, also from the above-quoted testimony, it is odd why despite PO3 Lagasca's claim that he saw appellant enter her house (from where she is claimed to have secured the plastic sachet), the team did not search her house. His justification therefor is too shallow to merit credence, given his experience in conducting operations against violations of RA No. 9165.

While lapses in procedure and noncompliance with the strict directive under Section 21 of R.A. No. 9165 are not necessarily fatal to the prosecution's case,[24] justifiable grounds therefor must thus be proffered and proven and cannot just be merely presumed to exist.[25] In the present case, the prosecution was glaringly silent on its procedural lapses.

Nagging doubt on the identity and integrity of the subject specimen is also mirrored in the testimony of PO3 Lagasca. He claimed that PO1 Alex Inopia made a request for drug test and for laboratory examination, viz:

PROSECUTOR BAGAOISAN:

Q:

After the arrest of the accused, what happened next, Mr. Witness?

PO3 LAGASCA:

A:

We brought the suspect together with the confiscated item to the office of AIDSOTF, sir.

Q:

What happened at the office of AIDSOTF?

A:

The accused was investigated, sir.

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Q:

What happened, Mr. Witness after the investigation was conducted?

A:

PO1 Alex Inopia made a request for drug test and a request for laboratory examination, sir.

Q:

What happened after the preparation of those requests you mentioned?

A:

We brought the accused together with the item confiscated to the SPD Crime Laboratory, sir.

Q:

What happened after you brought the item and the accused at (sic) the PNP Crime laboratory?

A:

We filed a case against the accused the following day, sir.[26] (emphasis and underscoring supplied)

The letter-request for Laboratory Examination was, however, made not by PO1 Inopia but by the Chief of Drug Enforcement Unit SPO4 Arsenio A. Mangulabnan, which was delivered by Danilo G. Molina of MADAC.[27] Molina's participation in the operation is not reflected in the records. Neither he nor Inopia took the witness stand.[28]

In People v. Balagat[29] where the specimen examined by the forensic chemist was delivered by one who did not appear to have been part of the buy-bust team and did not take the witness stand, the Court found the prosecution's failure to show that there was no breach in the chain of custody of the specimen sufficed to merit appellant's acquittal.

The foregoing observations leave it unnecessary for the Court to still pass on appellant's defenses of denial and frame-up even if they are inherently weak and commonly proffered in cases for violation of RA No. 9165.

WHEREFORE, the Decision of the Court of Appeals dated June 27, 2008 in CA-G.R. CR.-H.C. No. 02343 is REVERSED and SET ASIDE. Appellant, Jennefer Carin y Donoga, is ACQUITTED of the crime charged.

Let a copy of this Decision be furnished the Director of the Correctional Institute for Women, Mandaluyong CitywhoisORDERED to cause the immediate release of appellant, Jennefer Carin y Donoga, unless she is being held for some other lawful cause, and to inform this Court of action taken within five days.

SO ORDERED.

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

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[*] Additional member per Special Order No. 885 dated September 1, 2010 in lieu of Associate Justice Arturo D. Brion.

[1] Otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," which took effect on July 4, 2002.

[2] Records, p. 1.

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[3] "AAM" was used instead of "AMM".

[4] CA rollo, pp. 47-48, 88.

[5] TSN, Oct. 28, 2004, p. 9.

[6] Id at 48.

[7] "JCD" was used instead of "JDC", supra. See also TSN, Oct 28, 2004, pp. 8-12.

[8] Records, p. 11.

[9] Id at 121.

[10] Supra note 2.

[11] CA rollo, p. 89.

[12] Id at 46-51.

[13] Id at 19.

[14] Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon R. Garcia, supra at 85-94.

[15] Id at 32-45.

[16] Id at 37-39.

[17] (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)

[18] TSN, August 8, 2005, pp. 28-29.

[19] People v. Pagaduan, G.R. No. 179029, August 12, 2010. See also People v. Garcia, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266.

[20] People v. Denoman, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

[21] People v. Pagaduan, supra note 19.

[22] Id.

[23] TSN, August 8, 2005, pp. 29-32.

[24] People v. Pagaduan, supra note 19.

[25] Id. See also People v. Almorfe, G.R. No. 181831, March 29, 2010, and People v. de Guzman, G.R. No. 186498, March 26, 2010.

[26] TSN, August 8, 2005, pp. 22-23.

[27] Vide the Camp Crame, Quezon City Crime Laboratory Certification that the specimen was submitted by a certain Danilo G. Molina (Molina) of MADAC. Records, pp. 9-11.

[28] CA rollo, p. 86.

[29] G.R. No. 177163, April 24, 2009, 586 SCRA 640, 645-646.

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