

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARRY DE LA CRUZ Y DELA CRUZ, ACCUSED-APPELLANT.

G.R. No. 185717. June 08, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the Decision[1] dated June 30, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02727, which affirmed in toto the February 8, 2007 Decision[2] in Criminal Case No. Q-03-117814 of the Regional Trial Court (RTC), Branch 82 in Quezon City. The RTC found accused Garry de la Cruz y dela Cruz (Garry) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In an Information[3] filed on June 3, 2003, accused was indicted for the crime allegedly committed as follows:

That on or about the 29[th] of May, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero two (0.02) gram of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Upon arraignment on July 28, 2003, accused pleaded "not guilty" to the above charge.[4] Trial[5] on the merits ensued.

Version of the Prosecution

After conducting surveillance for a week, the Station Drug Enforcement Unit in La Loma, Quezon City planned a buy-bust operation against a certain Garry who was in the Barangay Watch List. The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA).

On May 29, 2003, at around 9:00 a.m., the station's Officer-in-Charge (OIC), Police Inspector Oliver Villanueva (P/Insp. Villanueva), gave a briefing on the buy-bust operation. Police Officer 2 Edcel Ibasco (PO2 Ibasco) was designated as poseur-buyer, while PO1 Roderick Valencia (PO1 Valencia), PO1 Alfredo Mabutol, and PO2 Ronald Pascual were assigned as back-up operatives. Their informant attended the briefing.

Thereafter, the buy-bust team proceeded to Biak-na-Bato corner Mauban Streets, Quezon City and arrived there at around 9:30 a.m. The informant introduced PO2 Ibasco to the accused, who was standing in front of a shanty, as wanting to buy shabu. The accused asked for Php 100, and when PO2 Ibasco paid the amount, the former handed over to him a white crystalline substance in a plastic sachet. Upon PO2 Ibasco's prearranged signal, the other members of the buy-bust team approached them. The accused, sensing what was happening, ran towards the

shanty but was caught by PO1 Valencia at the alley. PO1 Valencia introduced himself as a police officer and frisked the accused, in the process recovering the buy-bust money.

The buy-bust team then brought the accused to the station. The accused was turned over to the desk officer on duty, along with the substance in the sachet bought from him and the recovered buy-bust money. After inquest, the Information was filed on June 3, 2003. Accused was then committed to the Quezon City Jail.[6]

Consequently, the substance inside the sachet believed to be shabu was sent to and examined by a Philippine National Police forensic chemist, Engr. Leonard Jabonillo (Engr. Jabonillo). The laboratory result confirmed that the substance was positive for methamphetamine hydrochloride or shabu.

Only PO2 Ibasco and PO1 Valencia testified for the prosecution during the trial. The testimony of Engr. Jabonillo was dispensed with upon stipulation by the defense.

Version of the Defense

The accused denied selling shabu to PO2 Ibasco. In short, the accused used the defense of denial and alleged a frame-up by the arresting officers.

The accused testified that he was arrested on May 29, 2003 at around 9:00 a.m. inside his house at Barangay Manresa, Quezon City while he was alone drinking coffee. While two neighbors were talking in front of his house, a Tamaraw FX arrived. Five armed men alighted from it, whereupon his neighbors ran away and were chased by them. The armed men then returned, saying, "Nakatakas, nakatakbo." (They had escaped and ran.) One of the armed men saw the accused and entered his house. It was PO2 Ibasco, who frisked him and got PhP 60 from his pocket. PO1 Valencia also entered his house and came out with a shoe box, then said, "Sige, isakay n'yo na." (Take him in the car.) He asked the armed men what his violation was but was told to merely explain at the precinct.

In the police precinct, he was investigated and subsequently detained. They showed him a plastic sachet which they allegedly recovered from him. Then a man approached him and demanded PhP 30,000 for his release, but he said he did not have the money. Thereafter, he was presented for inquest.

A witness, Rodolfo Buencamino (Buencamino), narrated that in the morning of May 29, 2003, he called the police precinct to have a certain "Taba," an alleged drug pusher in their area, arrested. PO2 Ibasco and other police officers responded immediately. When the police officers arrived, Buencamino pointed to "Taba," who, however, was able to evade arrest. Thereafter, he was surprised to see the accused inside the vehicle of the policemen. But he did not know why and where the accused was arrested since he did not witness the actual arrest.

Another witness, Marbelita Collado Lepiten (Lepiten), testified that she was at the terrace of her house on 135 Manba St., Manresa, San Francisco del Monte, Quezon City, when she noticed the accused talking to a certain "Taba," a resident of the area. When a maroon Tamaraw FX stopped in front of the house of accused, "Taba" ran away and was pursued by two men who alighted from the vehicle. The two men returned without "Taba," who evidently escaped, and entered the house of the accused. She did not know what happened inside the house but she eventually saw the men push the accused outside into their vehicle.

The Ruling of the RTC

On February 8, 2007, the RTC rendered its Decision finding the accused guilty beyond reasonable doubt of the offense charged. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered finding accused GARRY DELA CRUZ guilty beyond reasonable

doubt of a violation of Section 5, Article II of R.A. No. 9165, and hereby sentencing him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

SO ORDERED.

In convicting the accused, the RTC relied on and gave credence to the testimony of prosecution witnesses PO2 Ibasco and PO1 Valencia. Citing *People v. Jubail*,^[7] which enumerated the elements required to be established by the prosecution for the illegal sale of prohibited drugs, the trial court found that the prosecution had established the elements of the crime.

The RTC pointed out that Buencamino may, indeed, have called the police to arrest a certain "Taba," an alleged pusher in the area, but he was not present when the accused was arrested. The trial court likewise did not accord evidentiary weight to the testimony of Lepiten, who testified that she saw the accused talking to "Taba" and that when the police officers entered the house of the accused, she was unaware of what transpired inside. Thus, the RTC concluded that her testimony did not provide clear and convincing justification to cast doubt on the candid and straightforward testimonies of the police officers.

Applying the presumption of the performance of official function, the lack of showing any ill motive on the part of the police officers to testify against the accused, and the principle that the bare denial of an accused is inherently weak, the RTC convicted the accused.

Consequently, with his conviction, the accused started to serve his sentence^[8] and was subsequently committed to the New Bilibid Prison in Muntinlupa City.

Aggrieved, accused appealed^[9] his conviction before the CA.

The Ruling of the CA

On June 30, 2008, the appellate court rendered the appealed decision, wholly affirming the findings of the RTC and the conviction of appellant. The fallo reads:

WHEREFORE, premises considered, herein appeal is hereby DENIED and the assailed Decision supra is hereby AFFIRMED in toto.

SO ORDERED.

The CA upheld the findings of the trial court that the essential elements required for the conviction of an accused for violation of Sec. 5, Art. II of RA 9165 were present in the instant case. The appellate court brushed aside the irregularities raised by accused-appellant by putting premium credence on the testimonies of the arresting police officers, who positively identified accused-appellant in open court. One with the trial court, the CA found no improper motive on the part of the police officers who, it said, were regularly performing their official duties. Besides, relying on *People v. Barlaan*,^[10] the CA held that the irregularities raised that there was no coordination with the PDEA and that no inventory was made and no photograph taken of the seized drug, if true, did not invalidate the legitimate buy-bust operation conducted. Moreover, the CA found that the corpus delicti, i.e., the confiscated shabu and the PhP 100 bill, were presented as evidence of the commission of the offense.

The CA also ruled that accused-appellant's mere denial, as corroborated by Buencamino and Lepiten, deserved scant consideration vis-à-vis the positive identification by the arresting officers who arrested him in flagrante delicto. Anent the questioned chain of custody, the CA found it unbroken and duly proven by the prosecution.

The Issues

Hence, We have this appeal.

Only accused-appellant, however, filed his Manifestation (In Lieu of Supplemental Brief),[11] while the Office of the Solicitor General (OSG), representing the People of the Philippines, submitted neither a Manifestation nor a Motion. Consequently, on July 27, 2009, the Court dispensed with the OSG's submission of a supplemental brief.[12] Since no new issues are raised nor supervening events transpired, We scrutinize the Brief for the Accused-Appellant[13] and the Brief for the Plaintiff-Appellee,[14] filed in CA-G.R. CR-H.C. No. 02727, in resolving the instant appeal.

Thus, accused-appellant raises the same assignment of errors, in that:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT NO. 9165.

II

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL.[15]

The Court's Ruling

The appeal is meritorious.

Accused-appellant argues that, first, the prosecution has not proved his commission of the crime charged for the following irregularities: (1) the arresting officers did not coordinate with the PDEA, as required under Sec. 86 of RA 9165; (2) no physical inventory was conducted and photograph taken of the alleged seized drug in the presence of public officials, as required by Sec. 21 of RA 9165; and (3) the chain of custody was not duly proved by the prosecution. And second, his denial is worthy of credence upon corroboration by the credible witnesses presented by the defense.

After a careful and thorough review of the records, We are convinced that accused-appellant should be acquitted, for the prosecution has not proved beyond reasonable doubt his commission of violation of Sec. 5, Art. II of RA 9165.

A buy-bust operation is "a form of entrapment, in which the violator is caught in flagrante delicto and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime." [16] However, where there really was no buy-bust operation conducted, it cannot be denied that the elements for illegal sale of prohibited drugs cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. After all, the indictment for illegal sale of prohibited drugs will not have a leg to stand on.

This is the situation in the instant case.

The courts a quo uniformly based their findings and affirmance of accused-appellant's guilt on: (1) the straightforward testimony of the arresting police officers; (2) their positive identification of accused-appellant; (3) no ill motive was shown for their testimony against accused-appellant; (4) the self-serving defense of denial by accused-appellant; (5) the seeming irregularities in the conduct of the buy-bust operation and the arrest of accused-appellant not invalidating the operation; and (6) the testimonies of Buencamino and Lepiten not showing that the buy-bust operation was not conducted.

Although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended, or misapplied in a case under appeal,[17] as here.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the corpus delicti.[18]

In *People v. Doria*,[19] the Court laid down the "objective test" in determining the credibility of prosecution witnesses regarding the conduct of buy-bust operations. It is the duty of the prosecution to present a complete picture detailing the buy-bust operation--"from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of sale." [20] We said that "[t]he manner by which the initial contact was made, x x x the offer to purchase the drug, the payment of the 'buy-bust money', and the delivery of the illegal drug x x x must be the subject of strict scrutiny by the courts to insure that law-abiding citizens are not unlawfully induced to commit an offense." [21]

No Surveillance Conducted

The testimony of PO2 Ibasco on direct examination did not mention an alleged surveillance conducted by PO2 Ibasco and PO1 Valencia prior to the alleged buy-bust operation, the corresponding intelligence report, and the written communiqué with the PDEA. The defense in cross-examination put to task both PO2 Ibasco and PO1 Valencia concerning these matters, as attested to in the Joint Affidavit of Apprehension[22] executed by the two police officers on May 30, 2003. PO2 Ibasco testified that his unit, specifically PO1 Valencia and himself, conducted surveillance on accused-appellant for a week prior to the buy-bust operation on May 29, 2003 which, according to him, turned out positive, i.e., accused-appellant was, indeed, selling shabu.

PO2 Ibasco on cross-examination testified, thus:

ATTY. LOYOLA:

Being an operative, you are of course, trained in intelligence work?

PO2 IBASCO:

Yes, sir.

Q:

You said you conducted surveillance but you cannot show any proof that there is an intelligence report, you have no proof?

A:

Yes, sir. There is, we were dispatched.

Q:

Where is your proof now?

A:

It's in our office.

Q:

Your dispatch order for the surveillance do you have any?

A:

I don't have it now sir but it's in the office.

Q:

You said that you conducted surveillance for one week, did I hear you right?

A:

Yes, sir.

x x x x

Q:

So, you are saying you did not actually see him selling drugs at that time during the surveillance?

A:

We saw him, sir.

x x x x

Q:

None. You did not even coordinate this operation with the PDEA?

A:

We coordinated it, sir.

Q:

What is your proof that you indeed coordinated?

A:

It's in the office, sir.

ATTY. LOYOLA:

May I make a reservation for continuance of the cross-examination considering that there are documents that the witness has to present.

COURT:

What documents?

ATTY. LOYOLA:

The proof your Honor that there was indeed a coordination and the intelligence report.

COURT:

Will you be able to produce those documents?

A:

Yes, sir. "Titingnan ko po."

PROSECUTOR ANTERO:

Titingnan?

COURT:

You are not sure? You don't have any copy of those documents?

A:

You Honor, what we have in the office is the dispatch.[23]

PO1 Valencia, likewise, on cross-examination testified:

ATTY. LOYOLA:

Mr. Witness, tell me during the orientation, you will agree with me that there was no coordination made to the PDEA regarding this intended buy bust operation?

PO1 VALENCIA:

We have coordinated at the PDEA.

Q:

You say that but you have no proof to show us that there was coordination?

A:

We have, sir.

Q:

What is your proof?

A:

We have files in our office for coordination.

Q:

Are you sure about that?

A:

Yes, sir.

Q:

Now, Mr. Witness, based on the information, you already planned to conduct a buy bust operation against the accused?

A:

Yes, sir.

Q:

But you will agree with me that there was no surveillance against the accused?

A:

We have conducted a surveillance one week before the operation and we conducted surveillance "Pinakawalan namin ang informant."

Q:

What do you mean "pinakawalan ang informant"?

A:

So that we have a spy inside to verify whether Garry was really selling shabu.

x x x x

Q:

In fact you don't have any information report?

A:

We have, sir. It's in the office. It's with Insp. Villanueva.

Q:

And because you claim that you have submitted an information and report, of course, you should have come up with an intelligence report.

A:

Yes, sir. It's also in the office of Insp. Villanueva.

x x x x

Q:

And the alleged recovered item, the plastic sachet which contained white crystalline substance was brought by whom to the PNP Crime Laboratory?

A:

I cannot remember who brought it sir because it was a long time ago.[24]

These documents--specifically the dispatch order, the intelligence report of the alleged surveillance, and the written communiqué from the PDEA for the conduct of the surveillance and buy-bust operation--were not, however, presented in court. Evidently, these documents are non-existent, tending to show that there really was no surveillance and, consequently, no intelligence report about the surveillance or the averred written communiqué from PDEA attesting to coordination with said agency. Worse, the prosecution never bothered to explain why it could not present these documents. Thus, there is no basis to say that accused-appellant allegedly sold shabu a week before he was arrested.

Even putting this lapse aside, the other irregularities raised by accused-appellant in the backdrop of the uncontroverted testimonies of Buencamino and Lepiten tend to show that there was really no buy-bust operation conducted resulting in the valid arrest of accused-appellant.

Generally, non-compliance with Secs. 21 and 86 of RA 9165 does not mean that no buy-bust operation against appellant ever took place.[25] The prosecution's failure to submit in evidence the required physical inventory and

photograph of the evidence confiscated pursuant to Sec. 21, Art. II of RA 9165 will not discharge the accused from the crime. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[26]

No Buy-Bust Operation

But where there are other pieces of evidence putting in doubt the conduct of the buy-bust operation, these irregularities take on more significance which are, well nigh, fatal to the prosecution.

Putting in doubt the conduct of the buy-bust operation are the uncontroverted testimonies of Buencamino and Lepiten, which gave credence to accused-appellant's denial and frame-up theory. The Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.[27] This Court has been issuing cautionary warnings to trial courts to exercise extra vigilance in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.[28]

The defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties.[29] Nonetheless, such a defense may be given credence when there is sufficient evidence or proof making it to be very plausible or true. We are of the view that accused-appellant's defenses of denial and frame-up are credible given the circumstances of the case. Indeed, jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt,[30] as in the instant case. At the very least, there is reasonable doubt that there was a buy-bust operation conducted and that accused-appellant sold the seized shabu. After all, a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense.[31]

Notably, Buencamino voluntarily testified to the effect that he called the police asking them to apprehend a certain "Taba," a notorious drug pusher in their area. PO2 Ibasco and company responded to his call and Buencamino helped identify and direct the policemen but "Taba" unfortunately escaped. Thus, Buencamino testified:

ATTY. BARTOLOME:

Mr. Witness, who asked you to testify today?

BUENCAMINO:

I volunteered myself to testify.

x x x x

Q:

Can you tell us how, when and where the accused was arrested?

A:

I was the one who called-up the precinct to arrest a certain Taba and not Garry. Taba was the target of the operation.

Q:

When was that?

A:

May 29, 2003.

Q:

Why did you call the police station?

A:

Ibasco talked to me to arrest Taba.

Q:

Why are they going to arrest Taba?

A:

Because he is a pusher in the area.

Q:

Why do you know Ibasco?

A:

Because he was a previous resident of Barangay Manresa.

Q:

You said you called police officer [sic] what was the topic. Mr. Witness?

A:

That Taba is already there and he already showed up and they immediately responded to arrest Taba.

Q:

So, Ibasco immediately responded to your call?

A:

Yes, sir.

Q:

When they arrived in your place what happened else, if any?

A:

I pointed to Taba so they could arrest him.

Q:

Where they able to arrest Taba?

A:

No, sir. He was able to escape.

Q:

Why they were not able to arrest alias Taba what happened, next Mr. Witness? What happened to Garry Dela Cruz?

A:

I was surprised because I saw Garry Dela Cruz already inside the vehicle and I don't know why Garry was inside the vehicle.[32]

Buencamino's assertion of knowing PO2 Ibasco was likewise not rebutted. Moreover, the presentation of the police logbook on calls received in the morning of May 29, 2003 would indeed show if Buencamino or someone else made a call to the precinct about a certain "Taba," but then, again, the prosecution did not bother to rebut the testimony of Buencamino. Verily, this time the presumption "that evidence willfully suppressed would be adverse if produced"[33] applies. In fact, the prosecution did not even assail Buencamino's credibility as a witness but merely made the point in the cross-examination that he had no actual knowledge of the arrest of accused-appellant. Thus, Buencamino was cross-examined:

PROSECUTOR ANTERO:

You were not with Garry at the time he was arrested?

BUENCAMINO:

No, sir.

Q:

You don't know where he was arrested at that time?

A:

I don't know where Garry was, sir.

PROSECUTOR ANTERO:

That will be all, your Honor.[34]

More telling is the testimony of Lepiten which, uncontroverted, shows that there was no buy-bust operation. Her testimony corroborates the testimony of Buencamino that police enforcers indeed responded to Buencamino's phone call but were not able to apprehend "Taba." This destroys the buy-bust operation angle testified to by PO2 Ibasco and PO1 Valencia. Since the buy-bust operation allegedly happened not inside the house of accused-appellant but in an open area in front of a shanty, such cannot be sustained in light of what Lepiten witnessed: The policemen chased but were not able to arrest "Taba"; thereafter, the policemen went inside the house of accused-appellant, emerging later with him who was led to the vehicle of the policemen. Thus, Lepiten testified:

ATTY. BARTOLOME:

Mrs. Witness, where were you on May 29, 2003, if you could still remember?

COURT:

What time?

ATTY. BARTOLOME:

At around 9:00 in the morning.

LEPITEN:

I was at the terrace of the house we are renting while sipping coffee.

Q:

Where is that house located?

A:

No. 135 Mauban Street, Barangay Manresa, Quezon City.

COURT:

Where is this, Novaliches?

A:

No, your Honor, near San Francisco Del Monte.

x x x x

ATTY. BARTOLOME:

While drinking coffee, what transpired next, Mrs. Witness or was there any unusual thing that happened?

A:

Yes, sir. While I was sitting on the terrace in front of the house we are renting is the house of Garry. Garry was talking to a certain Taba whom I know.

x x x x

Q:

While you saw them talking to each other, what happened next?

A:

Suddenly a maroon FX stopped.

Q:

Where?

A:

In front of the house of Garry.

Q:

When this maroon FX stopped, what happened next, if any?

A:

Taba ran, sir.

Q:

What happened next, if any?

A:

Two (2) men in blue pants and white shirt alighted from the maroon FX and ran after Taba.

Q:

Were they able to arrest Taba, Ms. Witness?

A:

No, sir. They were not able to catch him.

Q:

When they failed to arrest Taba, what did these two (2) men do, if any?

A:

They returned in front of the house and Garry and I saw them entered the house of Garry.

x x x x

Q:

What did they do, if any?

A:

I don't know what they did inside because I could not see them, sir. Then I saw them went down and pushed Garry towards the FX.

x x x x

Q:

After that what else happened, if any?

A:

I just saw that they boarded Garry inside the FX.

x x x x

COURT:

Any cross?

PROSECUTOR ANTERO:

No cross, your Honor.[35]

Thus, taking into consideration the defense of denial by accused-appellant, in light of the foregoing testimonies of Buencamino and Lepiten, the Court cannot conclude that there was a buy-bust operation conducted by the arresting police officers as they attested to and testified on. The prosecution's story is like a sieve full of holes.

Non-Compliance with the Rule on Chain of Custody

Moreover, the prosecution failed to sufficiently prove the requisite chain of custody of the seized specimen. "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[36] The CA found an unbroken chain of custody of the purportedly confiscated shabu specimen. However, the records belie such conclusion.

The testimonies of PO2 Ibasco and PO1 Valencia, as well as their Joint Affidavit of Apprehension, were bereft of any assertion on how the seized shabu in a heat-sealed sachet was duly passed from PO2 Ibasco, the chosen

poseur-buyer, who allegedly received it from accused-appellant, to forensic chemist Engr. Jabonillo, who conducted the forensic examination. While the testimony of Engr. Jabonillo was dispensed with upon stipulation by the defense, as duly embodied in the RCT Order dated March 16, 2004, it is likewise bereft of any assertion substantially proving the custodial safeguards on the identity and integrity of the shabu allegedly received from accused-appellant. The stipulation merely asserts:

x x x that he is a Forensic Chemist of the Philippine National Police; that his office received a request for laboratory examination marked as Exhibit "A"; that together with said request is a brown envelope marked as Exhibit "B"; which contained a plastic sachet marked as Exhibit "B-1"; that he conducted a requested laboratory examination and, in connection therewith, he submitted a Chemistry Report marked as Exhibit "C". The findings thereon showing the specimen positive for Methylamphetamine Hydrochloride was marked as Exhibit "C-1", and the signature of the said police officer was marked as Exhibit "C-2". He likewise issued a Certification marked as Exhibits "D" and "D-1", and thereafter, turned over the specimen to the evidence custodian and retrieved the same for [sic] purposed proceeding scheduled today.[37]

While both PO2 Ibasco and PO1 Valencia testified on the identity of the plastic sachet duly marked with the initials "EIGC," there was no sufficient proof of compliance with the chain of custody. The records merely show that, after the arrest of accused-appellant, the specimen was allegedly turned over to the desk officer on duty, whose identity was not revealed. Then it was the station's OIC, P/Insp. Villanueva, who requested the forensic examination of the specimen. In gist, from the alleged receipt of the plastic sachet containing 0.02 gram of shabu by PO2 Ibasco from the alleged buy-bust operation, the chain of custody of the specimen has not been substantially shown. The Court cannot make an inference that PO2 Ibasco passed the specimen to an unnamed desk officer on duty until it made its way to the laboratory examination. There are no details on who kept custody of the specimen, who brought it to the Crime Laboratory, and who received and kept custody of it until Engr. Jabonillo conducted the forensic examination. The stipulated facts merely made an allusion that the specimen custodian of the Crime Laboratory had possession of the specimen and released it for the proceedings before the trial court.

It is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.[38] This, the prosecution failed to do. The prosecution must offer the testimony of key witnesses to establish a sufficiently complete chain of custody.[39]

As the Court aptly put in *People v. Cantalejo*:

x x x the failure of the police to comply with the procedure in the custody of the seized drugs raises doubt as to its origins.

x x x failure to observe the proper procedure also negates the operation of the presumption of regularity accorded to police officers. As a general rule, the testimony of police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.

While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt.[40]

In sum, considering the multifarious irregularities and non-compliance with the chain of custody, We cannot but acquit accused-appellant on the ground of reasonable doubt. The law demands that only proof of guilt beyond reasonable doubt can justify a verdict of guilt.[41] In all criminal prosecutions, without regard to the nature of the

defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish the guilt of the accused beyond reasonable doubt.[42] As the Court often reiterated, it would be better to set free ten men who might probably be guilty of the crime charged than to convict one innocent man for a crime he did not commit.[43]

In fine, We repeat what the Court fittingly held in *People v. Ong*, a case similarly involving a buy-bust operation, thus:

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. While appellant's defense engenders suspicion that he probably perpetrated the crime charged, it is not sufficient for a conviction that the evidence establishes a strong suspicion or probability of guilt. It is the burden of the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required.

In the case at bar, the basis of acquittal is reasonable doubt, the evidence for the prosecution not being sufficient to sustain and prove the guilt of appellants with moral certainty. By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt. An acquittal based on reasonable doubt will prosper even though the appellants' innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the evidence of the defense. Suffice it to say, a slightest doubt should be resolved in favor of the accused.[44]

WHEREFORE, the instant appeal is GRANTED. Accused-appellant Garry De La Cruz y Dela Cruz is hereby ACQUITTED of the crime charged on basis of reasonable doubt. Accordingly, the CA Decision dated June 30, 2008 in CA-G.R. CR-H.C. No. 02727 is SET ASIDE. The Director of the Bureau of Corrections is ordered to cause the immediate release of accused-appellant, unless he is being lawfully held for another cause.

No costs.

SO ORDERED.

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

[1] Rollo, pp. 2-20. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose Catral Mendoza (now a member of this Court) and Vicente Q. Roxas.

[2] Records, pp. 127-132. Penned by Presiding Judge Severino B. De Castro, Jr.

[3] Id. at 1-2.

[4] Id. at 19.

[5] During the trial, the prosecution presented as its witnesses PO2 Edcel Ibasco and PO1 Roderick Valencia, while the testimony of Forensic Chemist Engr. Leonard Jabonillo was dispensed with upon stipulation by the defense. On the other hand, the defense presented accused Garry, Rodolfo Buencamino, and Marbelita Collado Lepiten.

[6] CA rollo, p. 11, Commitment Order dated July 7, 2003.

[7] G.R. No. 143817, May 19, 2004, 428 SCRA 478.

[8] Rollo, p. 25, Order of Commitment issued on February 27, 2007.

- [9] CA rollo, p. 23, Notice of Appeal dated March 1, 2007.
- [10] G.R. No. 177746, August 31, 2007, 531 SCRA 849.
- [11] Rollo, pp. 27-29, dated April 22, 2009.
- [12] Id. at 30.
- [13] CA rollo, pp. 37-51, dated September 18, 2007.
- [14] Id. at 73-85, dated January 21, 2008.
- [15] Id. at 39.
- [16] People v. Mateo, G.R. No. 179478, July 28, 2008, 560 SCRA 397, 417; citing People v. Ong, G.R. No. 137348, June 21, 2004, 432 SCRA 470, 484 and People v. Juatan, G.R. No. 104378, August 20, 1996, 260 SCRA 532, 538.
- [17] People v. Robles, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 654; citing People v. Pedronan, G.R. No. 148668, June 17, 2003, 404 SCRA 183, 188.
- [18] People v. Cabugatan, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547; People v. Del Mundo, G.R. No. 169141, December 6, 2006, 510 SCRA 554, 562.
- [19] G.R. No. 125299, January 22, 1999, 301 SCRA 668.
- [20] Id. at 698.
- [21] Id. at 698-699; People v. Ong, supra note 16, at 485; People v. De Guzman, G.R. No. 151205, June 9, 2004, 431 SCRA 516, 523.
- [22] Records, pp. 8-9.
- [23] TSN, March 16, 2004, pp. 115-119.
- [24] TSN, August 3, 2004, pp. 10-14.
- [25] People v. Naquita, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 447.
- [26] People v. Agulay, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595
- [27] People v. Daria, Jr., G.R. No. 186138, September 11, 2009, 599 SCRA 688, 709.
- [28] Sales v. People, G.R. No. 182296, April 7, 2009, 584 SCRA 680, 686.
- [29] Id.
- [30] People v. Mejia, G.R. No. 185723, August 4, 2009, 595 SCRA 356, 374.
- [31] Dizon v. People, G.R. No. 144026, June 15, 2006, 490 SCRA 593, 613; citing People v. Fronda, G.R. No. 130602, March 15, 2000, 328 SCRA 185, 194.
- [32] TSN, September 12, 2006, pp. 2-4.
- [33] Rules of Court, Rule 131, Sec. 2(e).
- [34] TSN, September 12, 2006, pp. 4-5.
- [35] TSN, January 30, 2007, pp. 2-6.

[36] *People v. Gutierrez*, G.R. No. 179213, September 3, 2009, 598 SCRA 92, 101-102; *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 777.

[37] *Records*, p. 47.

[38] *Sales v. People*, *supra* note 28, at 688-689.

[39] *Catuiran v. People*, G.R. No. 175647, May 8, 2009, 587 SCRA 567, 580.

[40] G.R. No. 182790, April 24, 2009, 586 SCRA 777, 788.

[41] *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653.

[42] *People v. Caiñgat*, G.R. No. 137963, February 6, 2002, 376 SCRA 387, 396; citing *People v. Mariano*, G.R. No. 134309, November 17, 2000, 347 SCRA 109 and *People v. Tacipit*, G.R. No. 109140 March 8, 1995, 242 SCRA 241.

[43] *Valeroso v. Court of Appeals*, G.R. No. 164815, September 3, 2009, 598 SCRA 41, 60; citing *People v. Sarap*, G.R. No. 132165, March 26, 2003, 399 SCRA 503, 512.

[44] G.R. No. 175940 [Formerly G.R. Nos. 155361-62], February 6, 2008, 544 SCRA 123, 141.

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