

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO MAGPAYO, DEFENDANT AND APPELLANT.

G.R. No. 187069. October 20, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

On appeal is the Decision[1] dated 9 October 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02858 which affirmed, with modification, the Judgment[2] dated 30 March 2007 of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61, finding appellant Antonio Magpayo guilty beyond reasonable doubt of violating Sec. 5, Article II of Republic Act (R.A.) No. 9165[3] and sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of P300,000.00.[4]

The Amended Information against appellant reads:

"That on or about 10:00 o'clock in the evening of the 18[th] day of January 2003, at Barangay 5, Poblacion, Municipality of Alabat, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to a police officer who acted as poseur buyer five (5) heat-sealed transparent plastic sachets, each containing methamphetamine hydrochloride, with a total weight of 0.24 gram, and for which said accused received as payment four (4) marked P100 bills, with Serial Nos. EL902137, FF502736, JM490061 and HW957560."[5]

Appellant pleaded not guilty on arraignment and trial on the merits thereafter ensued. The prosecution presented as witnesses the arresting officers, PO3 Alex Angulo (PO3 Angulo) and PO1 Isidro Realubit (PO1 Realubit), and the Forensic Chemist, PSI Zaide Fausto Abrera (PSI Abrera). From their respective testimonies, the following version of the events is gathered:

At around 10:00 in the evening of 18 January 2003, the officers on duty at the Alabat Police Station in Quezon received information from an asset that appellant was selling shabu in Barangay 5, Alabat, Quezon.[6] A team composed of PO3 Angulo, PO1 Realubit and two others was immediately dispatched to the area by the Chief of Police, P/Inspector Amado Interino, Jr., to conduct a buy-bust operation.[7] PO1 Realubit, PO3 Angulo and PO1 Felixberto Norbe positioned themselves in a dark place about five to seven meters away from appellant.[8] PO1 Jimmy Gaya (PO1 Gaya), the designated poseur-buyer, approached appellant to carry out the buy-bust. PO1 Gaya first handed the marked money to appellant who then handed him what was presumed to be shabu. After which, PO1 Gaya held appellant--the pre-arranged signal - to indicate that the sale had been consummated.[9] The rest of the team immediately rushed to the scene, arrested appellant and frisked him for deadly weapon. The searched yielded four more plastic sachets containing a white crystalline substance.[10]

The team thereafter brought appellant to the Alabat Police Station for investigation.[11] There the team recovered the four P100 bills marked money, as well as unmarked cash amounting to P2,500.00 which Police Inspector Interino, Jr., required to be confiscated as proceeds from appellant's sale of shabu.[12] The markings "ACA 01,"

"ACA 02," "ACA 03," "ACA 04" and "ACA 05" were then affixed to the five plastic sachets recovered from appellant before transmitting them to the Quezon Provincial Crime Laboratory Office for examination.[13] The contents of the plastic sachets tested positive for Methamphetamine Hydrochloride or shabu.[14]

Appellant denied the charge against him claiming that he was merely at the balcony of his house waiting for food when he was arrested.[15] Gloria Martinez, appellant's sister, was presented to corroborate appellant's testimony. According to her, she was in her own house at that time when she heard appellant shouting for help because he was being arrested so she followed him and the arresting officers to the municipal hall of Atimonan.[16] There she saw PO3 Angulo get four plastic sachets from his drawer and place it on top of his table as evidence against her brother. PO1 Realubit, on the other hand, produced the marked money; after which, PO3 Angulo conducted a body search on her brother and took the money found from his pockets.[17]

The trial court found that the prosecution's evidence had proven appellant's guilt beyond reasonable doubt and convicted him as follows:

WHEREFORE AND IN VIEW OF ALL THE FOREGOING, Court finds accused Antonio Magpayo, GUILTY beyond reasonable doubt for the crime charged of Violation of Section 5, Article II of Republic Act 9165 and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Php300,000.00

On appeal to the Court of Appeals, the decision of the trial court was affirmed by the appellate court with the modification that the fine imposed on appellant was increased to P500,000.00.

Hence, the instant appeal.

In the Resolution[18] of the Court dated 28 October 2009, we required the parties to simultaneously file their respective supplemental briefs if they so desire.

In its Manifestation[19] dated 23 December 2009, the Office of the Solicitor General (OSG) manifested that it will no longer file a Supplemental Brief considering that it has already exhaustively discussed the issues in its Appellee's Brief submitted to the Court of Appeals.

Likewise, in his Manifestation (In Lieu of Supplemental Brief)[20] dated 4 January 2009, appellant manifested that he will no longer file a supplemental brief and that he is adopting his Appellant's Brief as his Supplemental Brief.

Appellant assails, among other things, the failure of the buy-bust team to comply with the procedural requirements of Sec. 21 of the implementing rules of R.A. 9165, particularly the marking of evidence after seizure and confiscation, the conduct of a physical inventory and the prescribed witnesses to the buy-bust operation.[21] Appellant alleged that no coordination with the Philippine Drug Enforcement Agency (PDEA) was made by the buy-bust team,[22] contrary to the mandate by the above-mentioned provision.

We grant the appeal.

Admittedly, denial is an inherently weak defense, consistently viewed with disfavor by the courts, being a self-serving negative evidence.[23] In view, however, of the constitutional presumption that an accused is innocent until the contrary is proven beyond reasonable doubt, the burden lies on the prosecution to overcome such presumption by presenting the required quantum of evidence.[24] In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense.[25]

In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the corpus delicti or the illicit drug as

evidence.[26] Proof of the corpus delicti in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court.[27]

In the case at bar, the buy-bust team committed lapses in the handling of the drugs taken from accused which seriously undermine the integrity of the seized substance.

Section 21 of R.A. 9165 provides that:

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)

Further, Section 86 of the Implementing Rules and Regulations of R.A. 9165 states that:

(a) Relationship/Coordination between PDEA and Other Agencies - The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; Provided, further, that, in any case, said agencies shall inform the PDEA of their anti-drug operations within twenty-four (24) hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; x x x. (Emphasis supplied)

Strict compliance with the prescribed procedures is required because of the unique characteristic of illegal drugs, rendering them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[28] Hence, the rules on the measures to be observed during and after the seizure, during the custody and transfer of the drugs for examination, and at all times up to their presentation in court.[29]

In the present case, the records do not show that the above-mentioned procedural requirements were complied with. No physical inventory and photographs of the seized items were taken. Likewise, no prior coordination with the PDEA, prior to and after the conduct of the buy-bust operation, was made.

While Section 21 (a)[30] of the Implementing Rules and Regulations of R.A. 9165 excuses non-compliance with the afore-quoted procedure, the same holds true only for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. Here, the failure of the buy-bust team to comply with the procedural requirements cannot be excused since there was a break in the chain of custody of the substance taken from appellant. It should be pointed out that the identity of the seized substance is established by showing its chain of custody.[31]

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[32]

Thus, the following are the links that must be established in the chain of custody in a buy-bust situation: first, the

seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[33]

In this case, the prosecution failed to clearly demonstrate how the seized items were handled from the time they were taken from appellant to the moment they were presented as evidence in court. Although PO3 Angulo testified[34] that PO1 Gaya, the poseur-buyer, surrendered the same to their chief of police at the police station and that he (PO3 Angulo) marked[35] the same, as well as the other plastic sachets of shabu which their search on appellant yielded, it was not clear, however, when the markings were made: whether it was done before or after PO1 Gaya turned over the sold shabu to their chief of police. This detail assumes utmost importance when it is taken into account that there were a total of five (5) plastic sachets taken from appellant, but only one of those is the subject of this case for illegal sale of prohibited drugs. Since the poseur-buyer was not presented as a witness, it becomes absolutely necessary for the prosecution to identify with utmost certainty which substance was the subject of the sale.

This, the prosecution failed to do, as shown by the following excerpts from the testimony of PO3 Angulo:

Q

Of these five plastic sachet, taken from the accused, which is the subject of the Buy-Bust Operation?

A

According to SPO1 Gaya, he took that sachet from Antonio Magpayo and the remaining four sachet, I took that from his pocket because I noticed that there was a hard object in his pocket, so I frisked him and I recovered cash and these four sachet.

x x x

Q

Can you identify which of the specimen submitted by PSI Fausto Zaide is that bigger shabu which you mentioned as the subject of the buy bust operation?

A

(witness handed a brown small envelope containing the specimen submitted by PSI Zaide Abrera last June 15, 2004 when she testified)

Witness identified the heated plastic sachet containing his initial with .05.

Q

What is this .05 marking?

A

I think it is from the crime laboratory, I am not so sure about that marking.[36] (Emphasis supplied)

In addition, there was no clear evidence as to who handled the seized items next after they were marked. Based on the records, a request for examination was made by Police Inspector Interino, Jr., to the Quezon Provincial Crime Laboratory Office. On the said request, the stamp mark of its time and date of receipt states that a certain PO1 Catherine T. Aquino (PO1 Aquino) delivered the request,[37] presumably, with the specimens; but as to when and how PO1 Aquino came into possession of the subject specimens, the records are totally bereft of evidence.

Likewise, as to how the seized items were turned over to the court as evidence was not established.

Clearly, there was a break in the chain of custody of the seized substances. The failure of the prosecution to establish the evidence's chain of custody is fatal to its case. Under no circumstance can we consider or even safely assume that the integrity and evidentiary value of the drug was properly preserved by the apprehending officers. There can be no crime of illegal sale of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drugs.[38]

WHEREFORE, the appeal is GRANTED. The 9 October 2008 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02858 affirming with modification the judgment of conviction dated 30 March 2007 of the Regional Trial Court, Branch 61, Gumaca, Quezon in Criminal Case No. 7743-G is hereby REVERSED and SET ASIDE. Accused-appellant Antonio Magpayo is hereby ACQUITTED and ordered immediately released from detention unless his continued confinement is warranted from some other cause or ground.

SO ORDERED.

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

[1] Penned by Associate Justice Ricardo J. Rosario with Associate Justices Rebecca De Guia- Salvador and Vicente E. Veloso, concurring. Rollo, pp. 2-15.

[2] Penned by Judge Aurora V. Maqueda-Roman. Records, pp. 194-211.

[3] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds therefor, and for other Purposes.

[4] Records, p. 211.

[5] Id. at p. 16.

[6] TSN, 4 March 2004, p. 3 and TSN, 1 September 2004, p. 3.

[7] Id.

[8] Id.; TSN, 8 July 2004, p. 11 and TSN, 1 September 2004, p. 5.

[9] TSN, 4 March 2004, p. 4 and TSN, 8 July 2004, p. 11.

[10] Id., at p. 5; id. at p. 12 and TSN, 1 September 2004, p. 6.

[11] Id.

[12] Id.; TSN, 8 July 2004, p. 4 and TSN, 1 September 2004, p. 6.

[13] Exhibits "A," Folder of Exhibits, pp. 130.

[14] Exhibit "C," id. at p. 132 and TSN, 15 January 2004, p. 6.

[15] TSN, 7 April 2005, p. 3.

[16] TSN, 23 February 2006, pp. 3-4.

[17] Id. at 5-6.

[18] Rollo, p. 25.

[19] Id. at 27.

[20] Id. at 31.

[21] CA rollo, p. 59.

[22] Id.

[23] *People v. Madsali*, G.R. No. 179570, 4 February 2010, 610 SCRA 596, 608.

[24] *People vs. Dela Cruz*, G.R. No. 177222, 29 October 2008, 570 SCRA 273, 282.

[25] Id. at 282-283.

[26] *People vs. Kamad*, G.R. No. 174198, 19 January 2010, 610 SCRA 295, 303 citing *People vs. Robles*, G.R. No. 177220, 24 April 2009, 586 SCRA 647.

[27] Id.

[28] Id. citing *People v. Robles*, *supra* note 26.

[29] Id.

[30] (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 the 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. (Emphasis supplied)

[31] *People v. Barba*, G.R. No. 182420, 23 July 2009, 593 SCRA 711, 717.

[32] *Malillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632 citing *United States v. Howard-Arias*, 679 F.2d 363, 366, *United States v. Rocco*, 52 F.3d 58 and *Evidence Law*, Roger C. Park, David P. Leonard, Steven H. Goldberg, 1998, 610 Opperman Drive, St. Paul Minnesota, p. 507.

[33] *People v. Kamad*, *supra* note 26 at 307-308.

[34] TSN, 8 July 2004, p. 12.

[35] Id. at p. 5.

[36] Id.

[37] Exhibit "A," *supra* note 13.

[38] *People v. Suan*, G.R. No. 184546, 22 February 2010 citing *Valdez v. People*, G.R. No. 170180, 23 November 2007, 538 SCRA 611.

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