

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SONIA BERNEL NUARIN, APPELLANT.

G.R. No. 188698. July 22, 2015

Ponente: BRION, J.

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BRION, J.:

We decide the appeal filed by appellant Sonia Bernel Nuarin (appellant) from the April 28, 2009 decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02886.

The appealed decision affirmed the May 25, 2007 joint decision[2] of the Regional Trial Court (RTC), Branch 80, Quezon City, finding the appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Background Facts

The prosecution charged the appellant with violation of Sections 5[3] and 11,[4] respectively, of R.A. No. 9165 before the RTC, docketed as Criminal Case Nos. Q-03-114918 and Q-03-114919.

The appellant was duly arraigned; she pleaded not guilty to the charges laid. The prosecution presented Police Officer 1 (PO1) Roberto Manalo at the trial on the merits that followed, while the parties stipulated[5] on the testimony of Forensic Chemist, Police Senior Inspector (P/Sr. Insp.) Bernardino Banac. The appellant took the witness stand for the defense.

PO1 Manalo testified that on February 2, 2003, members of the District Drug Enforcement Group of the Central Police District, composed of himself, PO1 Filnar Mutia, PO3 Cleto Montenegro, PO3 Eduardo Datul, and PO3 Rommel Bautista went to Barangay Old Balara, Quezon City, to conduct a buy-bust operation against the appellant.[6] When they arrived there at around 12:30 p.m., the informant introduced PO1 Manalo to the appellant. PO1 Manalo told the appellant that he wanted to buy P100.00 worth of shabu. The appellant handed a sachet containing white crystalline substances to PO1 Manalo who, in turn, gave him the marked money. Immediately after, PO1 Manalo made the prearranged signal to his companions.[7] The other members of the entrapment team rushed to the scene and introduced themselves as policemen; PO1 Mutia searched the appellant and found two other plastic sachets inside the appellant's coin purse. Thereafter, the police brought the appellant and the seized items to the police station.[8]

The defense presented a different picture of the events. The appellant's testimony was aptly summarized by the CA as follows:

On February 2, 2003, at about 12:30 in the afternoon, accused-appellant was at home with her son John Bernel and friends Jan Ticson and Rebecca Agana. They had just finished eating lunch and accused appellant was, then, washing the dishes when she heard a knock on the door. At the door were PO3 Cleto Montenegro, PO1 Filnar Mutia and two others. They were looking for a certain Bogart. When accused-appellant said that she did not know where Bogart was, the police officers entered the house and searched the premises for about an hour.

When the search did not yield anything incriminatory, the police brought accused-appellant and the other occupants of the house to Camp Karingal In Quezon City. There, the police extorted P40,000.00 in exchange of accused-appellant's release. When the money was not produced, accused-appellant was charged by the police officers.[9]

In its joint decision[10] of May 25, 2007, the RTC found the appellant guilty of the illegal sale of 0.03 gram of shabu penalized under Section 5, Article II of R.A. No. 9165. The RTC held that the prosecution was able to prove, through testimonial and documentary evidence, that an illegal sale of drugs took place between the appellant and the poseur-buyer, PO1 Manalo. It added that the police were presumed to have regularly performed their official duties in the absence of any evidence to rebut this presumption. The RTC likewise found no merit in the appellant's defenses of denial and extortion as she failed to substantiate these. Accordingly, the RTC sentenced the appellant to suffer the penalty of life imprisonment, and ordered her to pay a P500,000.00 fine.

The RTC, however, acquitted the appellant of illegal possession of dangerous drugs in Criminal Case No. Q-03-114919 for insufficiency of evidence.

On appeal, the CA affirmed the RTC decision in toto. The CA held that the prosecution successfully proved all the elements of illegal sale of shabu under Section 5, Article II of R.A. No. 9165. It further ruled that the integrity and evidentiary value of the confiscated shabu had been preserved. The CA also disregarded the appellant's denial in the light of the positive identification made by PO1 Manalo.

In her brief on appeal, the appellant contends that the trial court gravely erred in convicting her of the crime charged despite the prosecution's failure to establish that a buy-bust operation took place. She also maintained that the chain of custody over the seized shabu had been broken.

For the State, the office of the Solicitor General (OSG) counters that the prosecution was able to establish that the sale of shabu between the appellant and the poseur-buyer was consummated. It also maintained that the nonpresentation in court of the original marked money, the forensic chemist, the informant, and the original marked money was not fatal in the prosecution for illegal drugs.

Our Ruling

After due consideration, we resolve to acquit the appellant for the prosecution's failure to prove her guilt beyond reasonable doubt.

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug, and the existence of the corpus delicti.

In securing or sustaining a conviction under R.A. No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the corpus delicti, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

Thus, to remove any doubt on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant.[11] It is in this respect that the prosecution failed.

The 'Marking' Requirement vis-a-vis the Chain of Custody Rule

Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, defines chain of custody as "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."

A crucial step in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, "planting," or contamination of evidence.[12]

In the present case, the prosecution's lone witness, PO1 Manalo, gave conflicting statements as to who marked the seized sachets. In his direct testimony, he claimed that it was the desk officer who marked the sachets, thus:

PROSECUTOR JOSEPHUS ASIS:

Q:

After you were able to arrest the accused and while going travelling (sic) to your office[,] who was holding the drug that you were able to buy from the accused?

PO1 MANALO:

A:

I, Sir.

Q:

After the recovered money by PO1 Mutia and after you arrived at the station[,] what did you do?

A:

We turned it over to the desk officer and the desk officer put the initial RM.

Q:

After the marking[,] what happened next?

A:

The investigator prepared a request to the crime laboratory and brought the drug to the crime lab.

Q:

Who brought it if you know?

A:

I can no longer remember.[13]

In the latter part of his direct examination, however, PO1 Manalo claimed that he was the one who marked the sachets. To directly quote from the records:

PROSECUTOR JOSEPHUS ASIS:

Q:

Now you mentioned that you were able to purchase drug from the accused. If the drug will be shown to you[,] would you be able to identify it?

PO1 MANALO:

A:

I have my marking there[,] sir.

Q:

Will you please go over the same and tell me what is the relation of the said sachet with the substance with the one you were able to buy (sic)?

Q:

This is the same stuff that I bought, this is my marking.

PROS ASIS:

Witness identified the sachet previously marked Exhibit "F-3." May we request that the marking placed by the witness in the sachet be marked as Exhibit "F-3-B."

xxx xxx xxx

Q:

How sure are you that the sachet that you have just identified is also the sachet that you recovered during the operation?

A:

Nobody held it except me.

Q:

How did you identify the sachet?

A:

The marking that I made.[14] [emphasis supplied]

In his cross-examination, PO1 Manalo again stated that he was the one who marked the confiscated plastic sachets with "RM."

We point out that succeeding handlers of the specimen will use the initial markings as reference. If at the first instance or opportunity, there are already doubts on who really placed the markings on the seized sachets (or if the markings were made in accordance with the required procedure), serious uncertainty hangs over the identification of the seized shabu that the prosecution introduced into evidence.

In addition, the records do not show that the sachets were marked in the presence of the appellant. In *People v. Sanchez*,^[15] we explained that the "marking" of the seized items - to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence - should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.^[16] We explained therein that [t]his step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.

Significantly, PO1 Manalo and PO1 Mutia did not even mention that they marked the seized plastic sachet in their Joint Affidavit of Arrest.

In *People of the Philippines v. Merlita Palomares y Costuna*,^[17] the Court acquitted the accused for the prosecution's failure to clearly establish the identity of the person who marked the seized drugs; the place where the marking was made; and whether the marking had been made in the accused's presence.

As to the subsequent links in the chain of custody, PO1 Manalo stated that he handed the seized plastic sachets to the desk officer at the police station. Curiously, the identity of this desk officer was never revealed during trial. This is particularly significant since no reference was ever made as to the person who submitted the seized specimen to the PNP Crime Laboratory for examination. PO1 Manalo, in fact, testified that he could not remember the person who brought the seized plastic sachets to the crime laboratory. Notably, the specimen was forwarded to the crime laboratory only at 10:35 p.m. It was not clear, therefore, who had temporary custody of the seized items when they left the hands of PO1 Manalo until they were brought to the crime laboratory for qualitative analysis.

The stipulation on the testimony of the forensic chemist does nothing to help fill the gap as regards the custody and possession of the sachets from the police station to the crime laboratory. To recall, the parties merely stipulated that P/Sr. Insp. Banac received a request for laboratory examination, together with the specimen to be examined; that he recorded the receipt of the sachets in the logbook and conducted a physical, chemical, and confirmatory test on the submitted specimen; that he found them positive for the presence of shabu; and that he put his markings on the sachet and placed it in an improvised envelope before forwarding it to the evidence custodian. Notably, the RTC held that P/Sr. Insp. Banac "has no personal knowledge from whom the subject specimen presented before this court was taken (sic)."^[18] Simply put, the stipulated testimony of the forensic chemical officer has no bearing on the question of whether the specimen submitted for chemical analysis and subsequently presented in court were the same as that seized from the appellant.

The requirements of paragraph 1, Section 21 of Article II of R.A. No. 9165

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

- 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 ours]

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which reads:

- (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 ours]

This procedure, however, was not shown to have been complied with by the members of the buy-bust team, as PO1 Manalo himself admitted that the police did not make an inventory and photograph the seized items either at the place of seizure or at the police station. In addition, the police did not offer any acceptable reason why they failed to do a basic requirement like a physical inventory of the seized drugs, considering that there were only three (3) sachets taken from the appellant.

In the recent case of *People of the Philippines v. Rosalinda Casabuena*,^[19] we acquitted the accused for failure of the police to make an inventory and to photograph the seized shabu. We explained that strict compliance with the prescribed procedure is required because of 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.

No Presumption of Regularity in the Performance of Official Duties

The courts a quo erred in giving weight to the presumption of regularity in performance that a police officer enjoys in the absence of any taint of irregularity and of ill motive that would induce him to falsify his testimony. The regularity of the performance of the police officers' duties leaves much to be desired in this case given the lapses in their handling of the allegedly confiscated shabu. The totality of all the procedural lapses we previously discussed effectively produced serious doubts on the integrity and identity of the corpus delicti, especially in the face of allegations of frame-up and extortion. We have previously held that these lapses negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable.^[20]

We also entertain serious doubts on PO1 Manalo's claim that they coordinated with the Philippine Drug Enforcement Agency (PDEA) before the buy-bust operation, as he admitted that there was no pre-operation report or coordination sheet prepared by the police. Significantly, PO1 Manalo likewise admitted that the police did not coordinate with the barangay officials of the subject area. To our mind, these circumstances vis-a-vis the lapses made in the handling and safekeeping of the alleged sachets of shabu puts in doubt the claim of the police that they had conducted a legitimate buy-bust operation.

In fine, the totality of evidence presented in the instant case does not support the appellant's conviction for violation of Section 5, Article II, R.A. No. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense. We reiterate that the prosecution's failure to comply with Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act, compromised the identity of the item seized, which is the corpus delicti of the crime charged against appellant. Following the constitutional mandate, when the guilt of the appellant has not been proven with moral certainty, as in this case, the presumption of innocence prevails and his exoneration should be granted as a matter of right.^[21]

A final note.

We are mindful of the pernicious effects of drugs in our society; they are lingering maladies that destroy families and relationships, and engender crimes. The Court is one with all the agencies concerned in pursuing an intensive and unrelenting campaign against this social dilemma. Regardless of our desire to curb this menace, we cannot disregard the protection provided by the Constitution, most particularly on the presumption of innocence bestowed on the appellant. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome this constitutional presumption. If the prosecution has not proved, in the first place, all the elements of the crime charged, which in this case is the corpus delicti, then the appellant deserves no less than an

acquittal.[22]

WHEREFORE, premises considered, we REVERSE and SET ASIDE the April 28, 2009 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02886. Sonia Bernel Nuarin is hereby ACQUITTED for the failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately RELEASED from detention unless she is confined for another lawful cause.

Let a copy of this Decision be furnished the Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report the action she has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Villarama, Jr.,[*] and Leonen, JJ., concur.

[*] Designated as Acting Member in lieu of Associate Justice Jose C. Mendoza, per raffle dated July 6, 2015.

[1] Rollo, pp. 2-7; penned by Associate Justice Ramon Bato, Jr., and concurred in by Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Jose C. Mendoza (now a member of this Court).

[2] CA rollo, pp. 104-112. In this Joint Decision, the RTC also acquitted the appellant in Criminal Case No. Q-03-114919 (possession of dangerous drugs) for insufficiency of evidence.

[3] Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] Possession of Dangerous Drugs.

[5] That he is a Forensic Chemical Officer of the Philippine National Police, Crime Laboratory, Camp Crame, Quezon City. That while performing his duties and functions, he received a request for laboratory examination together with the specimen for examination. After receiving the same, he recorded it in the logbook and proceeded to the physical, chemical, and confirmatory test. After which, he was able to determine the specimen as methylamphetamine hydrochloride, a dangerous drug. After his examination, he put his markings on the sachet and placed it in the improvised envelope where he put his markings and forwarded it to the evidence custodian and retrieved it for presenting at the hearing.

[6] TSN, April 4, 2006, p. 2; see also Joint Affidavit of Arrest, Records, p. 5.

[7] Id. at 4.

[8] Id. at 5-6; Records, p. 5.

[9] CA Decision, CA rollo, p. 90.

[10] Id. at 12-20.

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

[12] See People v. Alejandro, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289-290.

[13] TSN, April 4, 2006, p. 5.

[14] Id. at 6.

[15] 590 Phil. 214, 241 (2008), citations omitted.

[16] The Court held in *People v. Resurreccion* (G.R. No. 186380, October 12, 2009, 603 SCRA 510) that "marking" upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.

[17] G.R. No. 200915, February 12, 2014.

[18] Records, p. 70.

[19] G.R. No. 186455, November 19, 2014.

[20] See *People of the Philippines v. Jerry Caranto y Propeta*, G.R. No. 193768, March 5, 2014.

[21] *Supra* note 12, at 298, citing *People v. Cantalejo*, G.R. No. 182790, April 24, 2009, 586 SCRA 777, 783.

[22] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 326-327.

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