

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FERNANDO HABANA Y ORANTE, APPELLANT.

G.R. No. 188900. March 05, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is about whether the forensic examiner and the police investigator are indispensable witnesses in a drugs case to establish the chain of custody over the substance seized from the accused.

The Facts and the Case

On July 21, 2003 the public prosecutor of Caloocan City filed two separate informations[1] against the accused Fernando Habana before the Regional Trial Court (RTC) of that city in Criminal Cases C-68627 and C-68628 for violations of Sections 5 and 11, Article II of Republic Act (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

At the trial, the prosecution presented PO1 Fortunato Paras[2] and PO2 Amadeo Tayag.[3] On the other hand, the defense called to the witness stand the accused Habana and one Amelia Sevilla.[4]

The prosecution evidence shows that in the morning of July 17, 2003, members of the Anti-Illegal Drug Task Force Unit of the Caloocan City Police Station met with an informant at Chowking Restaurant in Sangandaan, Caloocan City. The informant told them that a certain Loloy, later on identified as the accused Habana, was selling shabu on Salmon Street.[5] Acting on this, the group proceeded to the place and staked it out.[6]

After locating accused Habana, PO3 Rizalino Rangel held a short briefing with his unit. They decided to undertake a buy-bust operation with PO1 Paras as poseur-buyer. Rangel told Paras to scratch his head by way of signal after he had made a purchase of drugs and handed over two pieces of fifty-peso bills that made up the buy-bust money.[7] Paras placed his initials "FP" on the money.[8]

Accompanied by the informant, Paras approached accused Habana who asked them how much they wanted to buy. Paras handed over the money to Habana who pocketed it. In turn, the latter handed over to Paras one plastic sachet that contained what appeared to be shabu. After PO1 Paras got the plastic sachet, he executed the pre-arranged signal, introduced himself as a policeman, and arrested Habana.[9]

Tayag rushed to the scene and helped Paras collar Habana. Tayag searched Habana's body and this yielded two more plastic sachets containing what appeared to be shabu and the marked bills.[10] The arresting officers handed over custody of his person and the items seized from him to PO3 Fernando Moran, the investigator on duty, who placed his marking on them and submitted the same to the Philippine National Police (PNP) Crime Laboratory for forensic examination.

Forensic Chemist Police Inspector Erickson Calabocal submitted Physical Science Report D-848-03, which revealed that the white crystalline substance contained in the plastic sachets tested positive for Methamphetamine

Hydrochloride, otherwise known as "shabu." [11]

At the pre-trial, [12] the parties stipulated: 1) that the assigned forensic chemist got the police request for laboratory examination of the specimen involved and, upon examination, found it positive for methamphetamine hydrochloride [13] and 2) that PO3 Fernando Moran was the investigating officer assigned to the case to whom the arresting officers turned over the accused as well as the three plastic sachets and that it was he who prepared the referral slip, [14] sworn affidavit of the arresting officers, [15] and the request for laboratory examination [16] of the specimen subject of this case. [17]

Accused Habana presented a different version. According to him, on the afternoon of July 17, 2003 he was on his way home when five to seven men in civilian clothes blocked his way. He asked what the matter was and they replied that they had to search him. He resisted because he was not doing anything illegal. Still, the men frisked him and took five hundred pesos from his pocket. They then brought him to the police station where he was detained. When his wife and sister came, the police officers told them to produce P20,000.00 for his freedom. When they failed to give the amount, they charged him with illegal possession and sale of shabu. [18]

Amelia Sevilla testified that on the date of the incident, at around 6:00 p.m., she was about to close her store when she saw two men suddenly approach and frisk accused Habana who was just standing near her store. Habana raised his hands and said, "Bakit ano po ang kasalanan ko bakit ninyo ako kinakapkapan?" After the men frisked him, they got the coins in his short pants pocket and then left with him. On the following day, Sevilla heard from her neighbors that the police had arrested Habana.

On January 21, 2008, the trial court found Habana guilty of both charges and sentenced him to a penalty of life imprisonment plus a fine of P500,000.00 in Criminal Case C-68627 and imprisonment for 12 years and 1 day to 14 years and a fine of P300,000.00 in Criminal Case C-68628.

Since one of the penalties imposed was life imprisonment, the case was elevated to the Court of Appeals (CA) for review and disposition pursuant to the ruling in *People v. Mateo*. [19] Upon review, the CA rendered a Decision [20] on June 17, 2009, affirming in full the decision of the trial court. The case is on appeal to this Court.

The Issues Presented

Two issues are presented:

1. Whether or not the prosecution's failure to present the forensic chemist and the police investigator assigned to the case is fatal to its case against accused Habana; and
2. Whether or not the prosecution failed to establish the integrity of the seized substance taken from Habana along the chain of custody.

The Rulings of the Court

One. Habana points out that the prosecution's failure to present at the trial the informant, the investigating officer, and the forensic chemist militates against the trustworthiness of the prosecution's evidence.

But no rule requires the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of prohibited drugs from him. The discretion on which witness to present in every case belongs to the prosecutor. [21]

The non-presentation of the informant cannot prejudice the prosecution's theory of the case. His testimony would merely be corroborative since police officers Paras and Tayag who witnessed everything already testified. Besides, as a rule, it is rarely that the prosecutor would present the informant because of the need to hide his

identity and preserve his invaluable service to the police.[22]

The prosecution did not deliberately omit the presentation of the forensic chemist who examined the seized substance or the investigating officer who was assigned to the case. As the trial court said in its decision, the prosecution wanted to present both as witnesses but the parties chose instead to stipulate on the substance of their testimonies.[23]

Accused Habana also insists that the RTC should not have admitted the laboratory report in evidence for failure of the forensic chemist to testify. But, as the Office of the Solicitor General correctly pointed out, the parties agreed at the pre-trial to dispense with such testimony and just stipulate that the police submitted the drug specimens involved in the case to the crime laboratory for analysis; that forensic chemist Calabocal examined it; that the result was positive for methamphetamine hydrochloride; and that this fact was as stated in Calabocal's report. It is too late for Habana to now impugn the veracity of such report.

Two. Accused Habana points out that, since the police officers involved failed to adhere strictly to the requirements of Section 21(1) of R.A. 9165, the evidence of the seized shabu cannot be admitted against him.

In all prosecutions for the violation of The Dangerous Drugs Act, the existence of the prohibited drug has to be proved.[24] The chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. To this end, the prosecution must ensure that the substance presented in court is the same substance seized from the accused.

While this Court recognizes substantial adherence to the requirements of R.A. 9165 and its implementing rules and regulations, not perfect adherence, is what is demanded of police officers attending to drugs cases,[25] still, such officers must present justifiable reason for their imperfect conduct and show that the integrity and evidentiary value of the seized items had been preserved. Here, however, they failed to meet these conditions. The police officers offered no explanation for their failure to observe the chain of custody rule.

The prosecution failed to show how the seized items changed hands, from when the police officers seized them from Habana to the time they were presented in court as evidence. PO1 Paras said that he turned over the sachets of shabu to the investigator on duty. But the prosecution did not adduce evidence on what the investigator on duty did with the seized articles, how these got to the laboratory technician, and how they were kept before being adduced in evidence at the trial.

Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who would then send it by courier to the police crime laboratory for testing. Since it is unavoidable that possession of the substance changes hand a number of times, it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. At the trial, the officer can then identify the seized substance and the procedure he observed to preserve its integrity until it reaches the crime laboratory.

If the substance is not in a plastic container, the officer should put it in one and seal the same. In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity.

If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how

briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.

Since the failure in this case to comply with the procedure in the custody of seized drugs compromised the identity and integrity of the items seized, which is the corpus delicti of each of the crimes charged against Habana, his acquittal is in order.

WHEREFORE, the Court GRANTS the petition, REVERSES and SETS ASIDE the decision of the Court of Appeals in CA-G.R. CR-H.C. 03165 dated June 17, 2009 as well as the decision of the Regional Trial Court of Caloocan City, Branch 120, in Criminal Cases C-68627 and C-68628, and ACQUITS the accused-appellant Fernando Habana y Orante on the ground of reasonable doubt.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is DIRECTED to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perez, JJ., concur.

[1] Records, pp. 1 and 7.

[2] TSN, August 3, 2005.

[3] TSN, October 26, 2006.

[4] TSN, December 13, 2007.

[5] TSN, August 3, 2005, p. 3.

[6] Id. at 4; TSN, October 26, 2006, pp. 6-7.

[7] Records, p. 5.

[8] TSN, August 3, 2005, p. 4.

[9] Id. at 5.

[10] TSN, October 26, 2006, pp. 23-25.

[11] TSN, October 7, 2003.

[12] Id. at 23-24.

[13] Id. at 6, see Physical Science Report D-848-03.

[14] Id. at 2.

[15] Id. at 3.

[16] Id. at 4.

[17] Id. at 112.

[18] TSN, December 7, 2006, pp. 3-12.

[19] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[20] Rollo, pp. 2-19.

[21] People v. Zeng Hua Dian, G.R. No. 145348, June 14, 2004, 432 SCRA 25, 32.

[22] People v. Ganenas, 417 Phil. 53, 62 (2001); People v. Chua Uy, 384 Phil. 70, 87 (2000).

[23] CA rollo, pp. 22-24.

[24] People v. Mendiola, G.R. No. 110778, August 4, 1994, 235 SCRA 116, 120.

[25] People v. Ara, G.R. No. 185011, December 23, 2009.

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