

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO MARTIN Y CASTANO, ACCUSED-APPELLANT.

G.R. No. 193234. October 19, 2011

Ponente: SERENO, J.

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SERENO, J.:

Before us on automatic review is the Decision of the Court of Appeals (CA) affirming the trial court's conviction of the accused for the sale of methylamphetamine hydrochloride or shabu. Accused cries foul, alleging extortion and citing various irregularities in the prosecution's evidence and in the conduct of the alleged buy-bust operation.

On 13 November 2006, an Information was filed against Roberto Martin y Castano alias Inpet (Martin) for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in the following manner:

That on or about November 6, 2006, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver, or give away to another, any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale ZERO POINT ZERO FIVE THREE (0.053) gram of white crystalline substance known as shabu, containing methylamphetamine hydrochloride which is a dangerous drug.

Contrary to law.

The case was docketed as Criminal Case No. 06-248053 and was raffled to the Regional Trial Court (RTC), Branch 2, Manila presided over by Judge Alejandro G. Bijasa. Martin pleaded not guilty to the charge during arraignment.

Trial ensued with the prosecution presenting the testimonies of Police Officer 3 (PO3) Rodolfo Ong and Senior Police Officer 1 (SPO1) Jose Mora. Meanwhile, the defense presented the testimonies of Juvilyn Caletisen, Jimmy Garote, and accused Martin himself.

According to the prosecution, the buy-bust operation and the subsequent events which led to the filing of the information against the accused were as follows:

SPO1 Mora testified that after they received information from a confidential informant,[1] who came to their office "at around 5:30 p.m." of 6 November 2006,[2]the Pre-Operation Report/Coordination Sheet was prepared on the same day. On re-direct, SPO1 Mora stated that the informant came to their office at 5:00 p.m.[3] On the other hand, SPO3 Ong testified that they prepared the Pre-Operation Report/Coordination Sheet on 6 November 2006 "on or about 2:00 to 3:00p.m." [4] and that they submitted this document to the Philippine Drug Enforcement Agency (PDEA) at "around 2:30 p.m." [5] The confidential informant was neither identified nor presented in court.

A photocopy of the Pre-Operation Report/Coordination Sheet provisionally marked Exhibit "D" on 4 September 2007[6] (the original was never presented in court) showed that it was received by "SPO4 Mariano" of

"PDEA-MMRO" but the date and time of receipt was not indicated in the space so provided. Assuming that the date and time of receipt by the PDEA-MMRO of the coordination document was either one of three faint stamps marked on the face thereof,[7] it received the said document hours ahead of the arrival of the confidential informant to the police station.

The Pre-Operation Report/Coordination Sheet named six (6) police officers as part of the team led by Senior Police Inspector Joselito Binayug. They planned on using six (6) vehicles, three (3) of them SUVs, to perform the operation against alias "Inpet" in the area broadly identified as "MPD AOR (PS1 to PS 11)". After accomplishing the Pre-Operation Report/Coordination Sheet, the police officers testified that they proceeded to Oro-B, Pandacan, Manila accompanied by the informant.

SPO1 Mora confirmed that he was designated as the poseur buyer, and that he was given the P100.00 marked money which he himself marked at the right hand portion with "DAID".[8] SPO1 Mora narrated that he arrived at the site together with the informant on board his car. The informant alighted from the car and, before he could reach Martin who was standing along Oro-B Street, the latter waved at the informant to come near.[9] SPO1 Mora then approached Martin together with the informant who introduced him to Martin as a buyer of P100.00 worth of shabu. Simultaneously, SPO1 Mora handed the P100.00 to Martin while the latter gave him a small plastic sachet.[10] SPO1 Mora grabbed Martin and introduced himself as a police officer while PO3 Ong assisted him with a body search of Martin.

The police officers testified that the pre-arranged signal to indicate the consummation of the buy bust operation was the arrest of the accused.[11] Only the poseur-buyer, SPO1 Mora, and the confidential informant were with Martin minutes prior to the latter's arrest. SPO3 Ong confirmed that he was 10 to 15 meters away from SPO1 Mora and Martin while the meeting was taking place such that he could not "ascertain what was going on between the poseur buyer, SPO1 Mora and the accused"[12] and that he was the only police officer who assisted SPO1 Mora during the arrest, as the other police officers were left inside their respective vehicles[13] and were "very far" from him.[14]

On the other hand, the defense witnesses testified as follows:

The accused denied that he is alias Inpet, or that he gave PO1 Mora a plastic sachet containing shabu.[15] He testified that on 6 November 2006, he was working at the junkshop with Jimmy Garrote whom he later invited for lunch at his house nearby. They were about to enter the alley near Oro-B when the accused's neighbor, Juvilyn Caletisen, called out to talk with him.[16] A certain Jayrold was also in the alley. It was then that six policemen arrived and forced them to go with the police.[17] When asked what their offense was, the police replied that they could explain their side at the precinct.[18]

Juvilyn Caletisen corroborated this with her testimony that six armed persons arrived at the alley near their house in Oro-B before lunch while she was conversing with the accused.[19] They arrested the accused, herself, Jimmy, Jayrold, and a certain Brian[20] and brought them to the police headquarters where they were detained for a night.

In their respective testimonies, Juvilyn Calitesen,[21]Jimmy Garote[22] and the accused[23] all testified that the police demanded that they give P5,000 each for their release or else, they will be charged with a crime. All the defense witnesses also testified that except for Martin who had no money, all of them were released because they were each able to give the P5,000 which the police demanded.[24]

On 10 March 2008, the trial court issued its Decision, the dispositive portion of which read in part:

WHEREFORE, finding the accused, Roberto Martin y Castano @ Inpet, GUILTY, beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay a fine of P500,000.00 without

subsidiary imprisonment in case of insolvency and to pay the costs.

The trial court held that there was no showing of any ill motive on the part of the police in testifying against Martin. The integrity and evidentiary value of the seized item was properly preserved by SPO1 Mora. The defense of frame up is viewed with disfavor because it is easily concocted and commonly used as a standard line of defense in most prosecution of dangerous drugs cases. Assuming there was extortion, such fact is not determinative of his guilt or innocence as the demand was made after the offense was consummated.

The Court of Appeals (CA) denied Martin's appeal and affirmed the RTC decision.[25] Martin elevated the matter for review by this Court, alleging that the Court of Appeals' Decision was contrary to facts, law, and jurisprudence.

OUR RULING

The accused is acquitted of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

Various irregularities in the conduct of the buy-bust operation and the processing of the evidence in the present case have left the case against the accused too weak to overcome the presumption of innocence in his favor.

The first irregularity attaches to the Pre-Operation Report/Coordination Sheet, which is intended to show the coordination between the PDEA and the police. Its importance lies in the fact that RA No. 9165 mandates close coordination between the Philippine National Police/National Bureau of Investigation and the PDEA on all drug-related matters, including investigations on violations of RA No. 9165, with the PDEA as the lead agency.[26]

In the case at bar, the original Pre-Operation Report/Coordination Sheet was not presented in court and the records contain only a photocopy thereof, provisionally marked Exhibit "D." Caution must be made that the failure of the prosecution to present the Pre-Operation Report, by itself, is not fatal to the prosecution's cause.[27] Even if the Pre-Operation Report/Coordination Sheet was properly presented in evidence, however, it is suspect as it was apparently accomplished and sent to PDEA hours before the informant arrived to give the police any information about the alleged illegal drug activity of Martin. SPO1 Mora variably testified that the confidential informant came to their office at 5 p.m. or 5:30 p.m. of 6 November 2006. Meanwhile, from the three faint stamps marked on the face of the Pre-Operation Report/Coordination Sheet, it was received by PDEA-MMRO either at 1:30 p.m., 1:40 p.m. or 2:00 p.m. of 6 November 2006.

Second, the actual marked money was likewise not presented in evidence[28] since SPO1 Mora could no longer locate the marked money[29] after he probably turned it over to the Investigator who photocopied it.[30] While the Court has also had occasion to hold that presentation of the buy-bust money, as a lone defect, is not indispensable to the prosecution of a drug case,[31] again it raises doubts regarding the regularity of the buy-bust operation.

Third, the police officer did not comply with the procedure for seizure of evidence laid out in Section 21 of R.A. No. 9165[32] and its corresponding Implementing Rules[33] without giving any reasonable excuse for the lapse. When confronted with the fact that they have not complied with the procedure for seizure of evidence laid out in Section 21 of R.A. No. 9165, SPO1 Mora testified:

Asst. Pros. Yap:

Q Now you said the marking was made by the Investigator. Why did you not mark the specimen at the scene of the transaction?

Witness:

A Because the Investigator will make an inventory regarding the recovered evidence and other pertinent documents, sir.

Asst. Pros. Yap:

That would be all, your Honor.

COURT:

Cross.

Atty. Cabrera:

With the kind permission of this Honorable Court.

Q Why did you not mark the specimen at the crime scene, you were not following the guidelines under the rules?

A Because it was not properly implemented yet those guidelines of RA 9165, sir.[34]

While noncompliance with the procedure laid out in Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case because the last sentence of the implementing rules provides 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," nevertheless, lapses in procedure "must be recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved." [35] Otherwise, the procedure set out in the law will be mere lip service.

In the present case, it was not shown that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. The only "reason" the police officers gave for not complying with the guidelines does not even hold water. The police justified their non-compliance with the procedure laid down in RA No. 9165 allegedly because these have not yet been "properly implemented" at the time. In truth, however, the implementing guidelines for R.A. No. 9165 took effect on November 27, 2002 while the arrest took place about four years later, or on 6 November 2006.

Fourth, the prosecution failed to establish the "chain of custody" [36] of the seized item. After the buy-bust operation, the police officers proceeded to the DAID office where they turned over the sachet and (probably) the marked money to the Investigator. [37] It was this unidentified "investigator" who marked the corpus delicti (plastic sachet) and who had custody of both the corpus delicti and the marked money. Apparently, it was also he who turned over the plastic sachet to the Crime Laboratory for testing. [38] However, he was not presented to testify as to the marking of the sachet, the whereabouts of the marked money and the completion of the chain of custody of the evidence from SPO1 Mora to the Crime Laboratory.

Various reasons exist why failure to establish the chain of custody in a narcotics case, such as the case at bar, is fatal to the prosecution's case. As the Court exhaustively explained in *Carino v. People*, [39]

While a testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the

exhibit's level of susceptibility to fungibility, alteration or tampering -- without regard to whether the same is advertent or otherwise not -- dictates the level of strictness in the application of the chain of custody rule.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. Hence, the risk of tampering, loss or mistake with respect to an exhibit of this nature is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. The danger, according to *Graham v. State*, is real. In that case, a substance later analyzed as heroin was excluded from the prosecution evidence because it was previously handled by two police officers prior to examination who, however, did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession. The court pointed out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

Indeed, the Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over a narcotic specimen there could have been tampering, alteration or substitution of substances from other cases -- by accident or otherwise -- in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. (Underscoring supplied)

Fifth, the presumption that the police officers regularly performed their duty cannot, standing alone, defeat the presumption of innocence of the accused herein. Generally, law enforcers are presumed to have regularly performed their duty,[40] but this is a mere procedural presumption which cannot overturn the constitutionally recognized presumption of innocence of the accused where lapses in the buy bust operation are shown. As we held in *People v. Sanchez*,[41]

Admittedly, the defense did not adduce any evidence showing that SPO2 Sevilla had any motive to falsify. The regularity of the performance of his duties, however, leaves much to be desired given the lapses in his handling of the allegedly confiscated drugs as heretofore shown.

An effect of this lapse, as we held in *Lopez v. People*, is to 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. There can be no ifs and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence.

People v. Santos instructively tells us that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. (Underscoring supplied)

In this connection, since there were only three persons who had witnessed what actually transpired between SPO1 Mora and the accused prior to the arrest (the accused, SPO1 Mora and the confidential informant), the prosecution's failure to present the confidential informant left it without any witness to corroborate SPO1 Mora's testimony. In effect, it is SPO1 Mora's word against that of the accused.

However, SPO1 Mora's testimony is unreliable. First, he testified that after interviewing the confidential informant who arrived at their office either at 5 p.m. or 5:30 p.m. of 6 November 2006, they prepared the Pre-Operation Report/Coordination Sheet and sent it to PDEA on the same day. However, the time stamped on

the Pre-Operation Report/Coordination Sheet showed that it was sent to PDEA much earlier - either at 1:30 p.m., 1:40 p.m. or 2 p.m. of 6 November 2006. Second, while SPO1 Mora claimed to have custody of the shabu specimen right after recovering it from Martin during the latter's arrest, he did not mark the same at the scene of the crime. This is contrary to the explicit procedure for seizure of evidence laid down in Section 21 of R.A. 9165. He justified his non-compliance by saying that at the time, the guidelines had not yet been "properly implemented." Contrary to SPO1 Mora's excuse, however, the implementing guidelines for R.A. No. 9165 took effect on November 27, 2002, or four years before this incident. Third, SPO1 Mora had custody of the buy-bust money at the time of Martin's arrest but when asked to explain its loss less than a year after the incident, he could not remember whether or not he handed it over to the investigator.[42]

In view of the cited irregularities in the buy bust operation and the processing of the evidence shown in the preceding discussion, SPO1 Mora's word cannot be given more weight than that of the accused.

The burden of proving beyond reasonable doubt that the accused is guilty of the crime charged is based on the constitutional presumption of innocence of the accused until the contrary is proven.[43] Measured against this yardstick, and considering the foregoing discussion, the prosecution has fallen short of what is required for the conviction of the accused.

IN VIEW THEREOF, the appealed Decision is hereby SET ASIDE and accused-appellant Roberto Martin y Castano is hereby ACQUITTED on grounds of reasonable doubt. His release from detention is hereby ordered forthwith, unless he is detained for some other lawful cause.

SO ORDERED.

Carpio, (Chairperson), Brion, Sereno, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated 3 October 2011.

[1] TSN, 11 September 2007, p. 11.

[2] Id. at 3.

[3] Id. at 13.

[4] TSN, 4 September 2007, p. 6.

[5] Supra, note 1 at 8.

[6] TSN, 4 September 2007, p. 6.

[7] The following stamps were found on the face of the document: (1) "DTC-WPD Rcvd by: PO1 Ariban, November 6, 2006 1:40 p.m."; (2) Received PNP DIID/INTEL Name: PO1 Romero, Date: Nov 06 2006, Time: 1400H; or (3) Received: PO1 Corpuz Nov 06 2006 1330H."

[8] TSN, 11 September 2007, p. 3.

[9] Id. at 4.

[10] Id. at 5.

[11] TSN, 4 September 2007, p. 5.

[12] Id. at 12.

[13] Id. at 11.

[14] Id. at 8.

[15] TSN, 12 November 2007, p. 6.

[16] Id. at 3.

[17] Id. at 4.

[18] Id. at 5.

[19] TSN, 2 October 2007, p. 3

[20] Id. at 5

[21] TSN, 2 October 2007, p. 7

[22] TSN, 9 October 2007, p. 5

[23] TSN, 12 November 2007, p. 4

[24] TSN, 2 October 2007, p. 10; TSN, 9 October 2007, p. 7; TSN, 12 November 2007, p. 5

[25] The Decision dated 30 April 2010 issued by the Court of Appeals Special First Division in CA-G.R. CR-HC No. 03283 was penned by Justice Isaias Dicdican and concurred in by Justices Andres Reyes, Jr. and Rodil Zalameda. Martin did not file a Motion for Reconsideration. Instead, he filed a Notice of Appeal.

[26] Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. - The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves ...

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters. (Underscoring supplied)

[27] People v. Daria, Jr., G.R. No. 186138, 11 September 2009, 599 SCRA 688.

[28] What is contained in the record is a photocopy of the marked money, provisionally marked as "Exhibit F."

[29] TSN, 11 September 2007, p. 9.

[30] Id. at 12.

[31] People v. Eugenio, G.R. No. 146805, 16 January 2003, 395 SCRA 317.

[32] SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or

Laboratory Equipment. -- The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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. xxx (Underscoring supplied)

[33] SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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;

(b) xxx (Underscoring and emphasis supplied)

[34] TSN, 11 September 2007, pp. 9-10.

[35] *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194.

[36] Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA No. 9165, defines "chain of custody" in this wise:

b. "Chain of Custody" means 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. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."

[37] TSN dated 11 September 2007, p. 6.

[38] *Id.* at 7.

[39] G.R. No. 178757, 13 March 2009, 581 SCRA 388.

[40] *People v. Alias Crysler Babac*, G.R. No. 97932, 23 December 1991, 204 SCRA 968.

[41] *Supra.*

[42] TSN dated 11 September 2007, p. 12.

[43] 1987 Constitution, Article III, Section 14(2).

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