PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARYZALDY GUZON, ACCUSED-APPELLANT.

G.R. No. 199901. October 09, 2013

Ponente: REYES, J.

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REYES, J.:

This is an appeal from the Decision[1] dated June 29, 2010 of the Court of Appeals (CA) in CA-G.R. CR HC No. 02890, which affirmed the Decision[2] dated June 15, 2007 of the Regional Trial Court (RTC) of Laoag City, Branch 13 in Criminal Case No. 11968-13, finding accused-appellant Garyzaldy Guzon (Guzon) guilty beyond reasonable doubt of the crime of illegal sale of shabu.

The Facts

Guzon was accused of violating Section 5, Article II of Republic Act (R.A.) No. 9165, also known as the Comprehensive Dangerous Drugs Act of 2002, in an Information[3] dated November 23, 2005, the accusatory portion of which reads:

> That on or about November 22, 2005 at 3:00 o'clock in the afternoon, in the municipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed plastic sachet of methamphetamine hydrochloride otherwise known as "shabu", a dangerous drug, weighing 0.06 gram to a police asset of PNP San Nicolas, Ilocos Norte, who posed as buyer in a buy[-]bust operation without authority to do so.
>
> CONTRARY TO LAW.[4]

Upon arraignment, Guzon entered a plea of "not guilty."[5] After pre- trial, trial on the merits ensued.

Version of the Prosecution

PO2 Elyzer Tuzon (PO2 Tuzon) testified for the prosecution. He claimed that on November 22, 2005, at around 11:00 o'clock in the morning, he was on duty at the police station of San Nicolas, Ilocos Norte, when he received a telephone call from an unknown tipper that Guzon was engaged in drug-pushing activity at Nalupta Street, Barangay 3, San Nicolas, Ilocos Norte. PO2 Tuzon relayed the information to Officer-In-Charge Chief Police Inspector Jerico Baldeo (OIC Baldeo), who ordered PO2 Tuzon and PO3 Cesar Manuel (PO3 Manuel) to verify the report. When PO2 Tuzon and PO3 Manuel failed to find Guzon at Nalupta Street, OIC Baldeo instructed them to seek the aid of an asset.[6]

After an unnamed asset identified Guzon's location, the police planned a buy-bust operation. PO2 Tuzon gave marked mon`ey to the asset designated to be the poseur-buyer of shabu. The asset was instructed to remove his cap to signal that he had received the shabu from Guzon.[7]

The buy-bust operation ensued at Nalupta Street, where the asset approached Guzon. From afar, PO2 Tuzon saw the asset hand three (3) marked P100.00 bills to Guzon, who then handed something to the asset.[8] After the

asset removed his cap, the police ran towards Guzon to arrest him. PO3 Manuel recovered the marked P100 bills from Guzon, while PO2 Tuzon received from the asset the item purchased from Guzon.[9] Guzon was brought to the San Nicolas Police Station, where PO2 Tuzon prepared a Certification/Inventory of Seized/Confiscated Items[10], marked the seized sachet with his initials "EAT",[11] and then delivered the sachet to the police crime laboratory for chemical examination.[12] The sachet was received by PO3 Nolie Domingo (PO3 Domingo).[13]

Given a stipulation by the prosecution and the defense during the pre- trial, PO3 Domingo and Police Senior Inspector Mary Ann Cayabyab (PSI Cayabyab), the Forensic Chemical Officer of the Ilocos Norte Provincial Crime Laboratory Office who conducted the chemical examination, no longer testified in court. The RTC's pre-trial Order[14] provides:

> [T]he parties stipulated on the gist of the testimony of PO3 Nolie Domingo to the effect that as per request for laboratory examination, he was the one who received the specimen from Elyzer Tuzon and that he delivered the same to PSI Mary Ann Cayabyab. They also stipulated on the testimony of PSI Cayabyab to the effect that after receiving the said specimen and found the specimen to be shabu, thus, she issued her initial report and confirmatory report under Chemistry Report No. D-090-2005 which were marked as Exhibits F and G, respectively. They further agreed that said forensic chemical officer and PO3 Domingo could identify the said specimen and the labels as appearing therein. The defense admitted the proffer without admitting that the specimen came from the accused. The testimonies of PO3 Nolie Domingo and PSI Mary Ann Cayabyab were therefore dispensed with. x x x.[15]

The Initial Laboratory Report[16] and Chemistry Report[17] referred to in the pre-trial Order both state that the specimen, weighing 0.06 grams, that was submitted to the crime laboratory for examination contained methamphetamine hydrochloride, otherwise known as shabu.

Version of the Defense
The defense presented the testimonies of Guzon, his friend Jesus Guira, Jr. (Guira) and brother Edwin Guzon (Edwin).

Guzon denied the charge against him. He claimed that on the early afternoon of November 22, 2005, he had a drinking spree with Guira at the latter's house in Barangay San Nicolas, Ilocos Norte.[18] At past 3:00 o'clock in the afternoon, his brother Edwin arrived and told him that PO3 Manuel wanted to talk to him. Guzon approached PO3 Manuel, who invited him to the municipal hall but would not say the reason therefor.[19] Guzon insisted that the matter be instead discussed near Guira's house, but PO3 Manuel declined. Thereafter, PO2 Tuzon arrived[20] and upon his prodding, Guzon agreed to go with them to the municipal hall.[21] Only PO2 Tuzon went with Guzon inside the municipal hall.[22]

PO2 Tuzon later brought Guzon to a police camp in Laoag City. While on board a patrol car on their way to the camp, PO2 Tuzon realized that he forgot the shabu in his office drawer so they went back to the municipal hall. Thereafter, they headed back to the police camp where, upon their arrival, PO2 Tuzon handcuffed Guzon before proceeding to the camp's second floor.[23]

While at the second floor, PO2 Tuzon took a sachet from his pocket then handed it to a desk officer. Guzon was instructed by a woman to fill a small bottle with his urine. After he complied, PO2 Tuzon brought him back to San Nicolas.[24]

On the morning of November 23, 2005, Guzon was brought by PO2 Tuzon, PO3 Manuel and another policeman to a place south of the City Hall of Laoag, near the corner of the Laoag-Solsona terminal. There, Guzon saw PO3 Manuel take out three P100.00 bills from his wallet then hand them to PO2 Tuzon. PO2 Tuzon left and when he returned, he handed photocopies of the P100.00 bills to PO3 Manuel.[25]

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Guira and Edwin also testified for Guzon's defense. Guira claimed that at about 1:00 o'clock in the afternoon on November 22, 2005, he was having a drinking session outside his house with Guzon and several other persons.[26] At around 3:00 o'clock in the afternoon, Edwin arrived to inform Guzon that PO3 Manuel was looking for him.[27] Guzon then left the place with PO3 Manuel, PO2 Tuzon and one George.[28] Edwin's testimony also corroborated the account of Guzon, having testified that on November 22, 2005, he was asked by PO3 Manuel on the whereabouts of Guzon.[29] When he saw his brother at Guira's house, he approached him to say that PO3 Manuel was looking for him.[30]

The testimony of one Ronnie Dimaya was dispensed with after the prosecution admitted that the gist of his testimony would be merely corroborative of the testimonies of Guira and Guzon.[31]

The RTC's Ruling
On June 15, 2007, the RTC rendered its Decision[32] finding Guzon guilty as charged. The dispositive portion of its Decision reads:

> WHEREFORE, judgment is hereby rendered finding accused Garyzaldy Guzon GUILTY beyond reasonable doubt as charged of illegal sale of shabu and is therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of [P]500,000.00.
>
> The contraband subject hereof is hereby confiscated, the same to be disposed of as the law prescribes.
>
> SO ORDERED.[33]

Feeling aggrieved, Guzon appealed to the CA. Notwithstanding the RTC's findings, he denied the charge against him. He also questioned the credibility of PO2 Tuzon as a witness for the prosecution and the police officers' non-compliance with the chain of custody rule in handling the confiscated shabu.

The CA's Ruling
On June 29, 2010, the CA rendered its Decision[34] denying the appeal. It reasoned that Guzon's defenses of denial and frame-up are common and could easily be fabricated; they could not prevail over the positive identification of the accused by the police officer who testified for the prosecution.

In affirming Guzon's conviction, the CA also cited the presumption of regularity in the performance of official duty by the police operatives who conducted the buy-bust operation. As to the issue of chain of custody, the CA rejected Guzon's argument, and maintained that based on the evidence, the integrity and evidentiary value of the confiscated shabu were preserved.

Hence, this appeal.

The Present Petition
Guzon seeks his acquittal mainly on the basis of the prosecution's failure to establish the chain of custody of the subject drug. He argues[35] that: (1) the evidence allegedly seized from Guzon could have been planted; it was not immediately marked at the place of seizure; (2) there were no photographs and physical inventory of the confiscated drug; (3) the prosecution failed to offer justification for the absence of photographs and inventory; (4) the asset who acted as the poseur-buyer was not identified; and (5) the prosecution failed to establish that the integrity of the seized item was sufficiently preserved through an unbroken chain of custody.

This Court's Ruling
The appeal is meritorious. The Court acquits Guzon for the prosecution's failure to prove his guilt beyond reasonable doubt. In Reyes v. CA,[36] the Court emphasized that a "[c]onviction must stand on the strength of the [p]rosecution's evidence, not on the weakness of the defense which the accused put up. Evidence proving the

guilt of the accused must always be beyond reasonable doubt. If the evidence of guilt falls short of this requirement, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course."[37]

In the instant case, Guzon was accused of violating Section 5, Article II of R.A. No. 9165 which prohibits the sale of illegal drugs. The elements of the crime include: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing.[38] The Court explained in People v. Bautista[39] that in drug-related prosecutions, the State bears the burden not only of proving these elements of the offense under R.A. No. 9165, but also of proving the corpus delicti, the body of the crime. The dangerous drug is itself the very corpus delicti of the violation of the law.[40]

"[A] buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors."[41] As in all drugs cases, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. 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.[42] The rule is imperative, as 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 is established with the same unwavering exactitude as that requisite to make a finding of guilt.[43]

To eliminate doubt, and even abuse, in the handling of seized substances, some safeguards for compliance by law enforcement officers are established by law and jurisprudence. For one, Section 21 of R.A. No. 9165, upon which Guzon anchors his appeal, reads in part:

> 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;
>
> x x x x (Emphasis ours)

The Implementing Rules and Regulations (IRR) of R.A. No. 9165, particularly Section 21 thereof, further provides the following guidelines in the custody and control of confiscated drugs:

> x x x x
>
> (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,

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> 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;
>
> x x x x (Emphasis ours)

The rule includes the proviso that procedural lapses in the handling of the seized drugs are not ipso facto fatal to the prosecution's cause, provided that the integrity and the evidentiary value of the seized items are preserved. In each case, courts are nonetheless reminded to thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards that are drawn by the law[44] for the protection of the corpus delicti. The strict demands and significant value of the chain of custody rule were emphasized in the oft-cited Malillin v. People[45] wherein the Court held:

> 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 into 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.
>
> While 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.[46] (Citations omitted and emphasis supplied)

As Guzon correctly pointed out in his Supplemental Brief, there were several lapses in the law enforcers' handling of the seized item which, when taken collectively, render the standards of chain of custody seriously breached. In a line of cases, the Court explained that the failure to comply with the indispensable requirement of corpus delicti happens not only when it is missing, but also where there are substantial gaps in the chain of custody of the seized drugs which raise doubts on the authenticity of the evidence presented in court.[47] Upon review, the Court has determined that such lapses and doubt mar the instant case.

First, the police officers who took part in the buy-bust operation failed to mark the seized item immediately after its confiscation from Guzon. The Court explained in People v. Coreche[48] the importance in the chain of custody of the immediate marking of an item that is seized from an accused, to wit:

> Crucial 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 after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are 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 at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.[49] (Citation omitted and emphasis ours)

Here, instead of immediately marking the subject drug upon its confiscation, PO2 Tuzon marked it with his initials "EAT" only upon arrival at the police station.[50] While the failure of arresting officers to mark the seized

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items at the place of arrest does not, by itself, impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence,[51] such circumstance, when taken in light of the several other lapses in the chain of custody that attend the present case, forms part of a gross, systematic, or deliberate disregard of the safeguards that are drawn by the law,[52] sufficient to create reasonable doubt as to the culpability of the accused.

The Court has determined that although a physical inventory of the items seized during the buy-bust operation forms part of the case records, the buy-bust team failed to fully comply with the requirements under Section 21 of R.A. No. 9165 for its preparation and execution. Under the law, the inventory must be made "in the presence of the accused or the person/s from whom [the] items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof." These requirements are reiterated in Section 21, IRR of R.A. No. 9165. Non-compliant with such rules, however, the Certification/Inventory of Seized/Confiscated Items[53] in this case only bears the signatures of PO3 Manuel and PO2 Tuzon as apprehending officers. Although the Certification indicates the name of Guzon under the section "With Conformity", it includes neither his signature nor of any other person who is allowed by law to witness the required inventory. There is also no proof that a copy of the inventory was received by any of the persons enumerated under the law.

Besides these deficiencies in the preparation of the inventory, no photograph of the seized item, which is also required under Section 21 of R.A. No. 9165, forms part of the case records.

The saving clause in Section 21, IRR of R.A. No. 9165 fails to remedy the lapses and save the prosecution's case. We have emphasized in People v. Garcia[54] that the saving clause applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds.[55] Failure to follow the procedure mandated under R.A. No. 9165 and its IRR must be adequately explained.[56] Equally important, the prosecution must establish that the integrity and the evidentiary value of the seized item are properly preserved. The prosecution failed in this regard. Taking into account the several rules and requirements that were not followed by the law enforcers, there was an evident disregard on their part of the established legal requirements. Their breach of the chain of custody rule, magnified by the prosecution's failure to explain the deficiencies during the trial, casts doubt on whether the item claimed to have been sold by Guzon to the police asset was the same item that was brought for examination by the police crime laboratory and eventually presented in court as evidence.

As further proof that the chain of custody rule was breached in this case, the Court points out the discrepancy in the weight of the item that was supposedly seized following the buy-bust operation, and that examined by PSI Cayabyab. We refer to the inventory prepared by PO3 Manuel and PO2 Tuzon on the items that were confiscated after the buy-bust operation:

> One (1) piece small heat[-]sealed plastic sachet containing white crystalline granules believed to be methamphetamine hydrochloride locally known as "SHABU", weighing more or less .01 gram including plastic material.
>
> x x x x
>
> The above enumerated and described items were properly marked with capital letters EAT representing the name Elyzer Agarma Tuzon who was one of the apprehending police officers x x x.[57] (Emphasis ours)

The fact that the item sold by Guzon to the police asset weighed only 0.01 gram is provided in several other documents: first, in the Joint Affidavit[58] dated November 22, 2005 executed by PO3 Manuel and PO2 Tuzon; second, the September 22, 2005 entry in the San Nicolas Municipal Police Station's Temporary Police Blotter, as provided in a Certification[59] dated November 22, 2005 issued by OIC Baldeo; and third, the Memorandum[60]

requesting for laboratory examination signed by OIC Baldeo and which reads in part:

> EXHIBIT:
>
> a) One (1) piece of small heat[-]sealed transparent plastic sachet containing crystalline substance suspected to be shabu weighing more or less .01 gram including plastic sachet marked hereto as exhibit EAT[.][61] (Emphasis ours)

Clearly, the specimen submitted to the police crime laboratory weighed only 0.01 gram, even including the plastic sachet that contained the substance.

It appears, however, that the specimen examined by PSI Cayabyab of the police crime laboratory differed from the specimen allegedly seized by the police and brought for examination. The Initial Laboratory Report[62] prepared by PSI Cayabyab indicates that the specimen examined weighed more, specifically at 0.06 gram, excluding its plastic container. Chemistry Report No. D-090-2005[63] issued by PSI Cayabyab likewise provides the following details:

> SPECIMEN SUBMITTED:
>
> A – One (1) heat-sealed transparent plastic bag with markings containing 0.06 gram of white crystalline substance. xxx
>
> x x x x
>
> REMARKS:
>
> Weight do[es] not include plastic container. xxx[.][64] (Emphasis ours)

Clearly from the foregoing, the item that was allegedly obtained by the police from Guzon during the buy-bust operation differed or, at the very least, was no longer in its original condition when examined in the crime laboratory. The variance in the weight of the seized item vis-à-vis the examined specimen and, ultimately, the detail provided in the Information, remained unaddressed by the prosecution. The testimony of PO2 Tuzon offered no explanation for the difference. PO3 Domingo and PSI Cayabyab could have provided the clarification, but their testimonies were dispensed with following the parties' agreement during the pre-trial.[65] The identity of the item examined by PSI Cayabyab could have also been verified from the markings "EAT" that was made by PO2 Tuzon on the plastic sachet. Her reports, however, made no specific reference to such markings, as they merely described the subject specimen as "one (1)-heat-sealed transparent plastic bag with markings containing 0.06g of white crystalline substance."[66]

The Court is mindful of the stipulations that were entered into by the parties during the pre-trial[67] to the effect that: (a) PO3 Domingo received the specimen from PO2 Tuzon and then delivered it to PSI Cayabyab; (b) PSI Cayabyab received the specimen and when she found the specimen to be shabu, she issued her initial and confirmatory reports; and (c) PSI Cayabyab and PO3 Domingo could identify the specimen and the labels appearing thereon. These bare stipulations, however, merely address the matter of the specimen's transfer from one police officer to the next, without offering any explanation as to the specimen's condition during the transfers, how each person made sure that the item was not tampered with or substituted, and an indication of the safeguards that were employed to prevent any tampering or substitution. Given the considerable difference between the specimen's weight upon its seizure and its weight at the time of its examination, with the seized item's weight being a mere 16% of the examined specimen's weight, the determination in this case of whether the rationale for the chain of custody rule was duly satisfied necessitated a more intensive inquiry. The prosecution's failure to do so was fatal to its case. It failed to prove beyond reasonable doubt that the integrity

and evidentiary value of the substance claimed to be seized during the buy-bust operation was preserved. The doubt is resolved in Guzon's favor, as the Court rules on his acquittal.

In drugs cases, the prosecution must show that the integrity of the corpus delicti has been preserved. This is crucial in drugs cases because the evidence involved – the seized chemical – is not readily identifiable by sight or touch and can easily be tampered with or substituted.[68] "Proof of the corpus delicti in a buy-bust situation requires not only the actual existence of the transacted drugs but also the certainty that the drugs examined and presented in court were the very ones seized. This is a condition sine qua non for conviction since drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist."[69] The flagrant lapses committed in handling the alleged confiscated drug in violation of the chain of custody requirement even effectively negate the presumption of regularity in the performance of the police officers' duties, as any taint of irregularity affects the whole performance and should make the presumption unavailable.[70]

In addition to the foregoing, the Court finds merit in Guzon's argument that the non-presentation of the poseur-buyer to the witness stand was fatal to the prosecution's cause. We emphasize that in a prosecution for illegal sale of dangerous drugs, the prosecution must convincingly prove that the transaction or sale actually transpired.[71] In the instant case, the poseur- buyer in the buy-bust operation, a civilian, was the witness competent to prove such fact, given the testimony of PO2 Tuzon that at time the supposed sale happened, he and PO3 Manuel were positioned about 20 meters away from Guzon and the poseur-buyer. Although PO2 Tuzon testified during the trial on the supposed sale, such information he could offer was based only on conjecture, as may be derived from the supposed actions of Guzon and the poseur-buyer, or at most, hearsay, being information that was merely relayed to him by the alleged poseur-buyer. Given the 20-meter distance, it was unlikely for PO2 Tuzon to have heard the conversations between the alleged buyer and seller. True enough, his testimony provided that he and PO3 Manuel merely relied on an agreed signal, i.e., the poseur-buyer's removal of his cap, to indicate that the sale had been consummated. On cross-examination, PO2 Tuzon even admitted:

> [ATTY. BALUCIO:]
>
> Q And Mr. Witness, when you allegedly arrived at the target place, you were at a distance far away from the alleged transaction, is it not?
>
> A More or less twenty (20) meters, sir.
>
> Q And that if any transaction have been (sic) transpired at that time, you did not hear it Mr. Witness?
>
> A Yes, sir.
>
> Q And you did not also see if what was being handed at that time was shabu Mr. Witness?
>
> A Yes, sir.[72]

In the absence of neither the poseur-buyer's nor of any eyewitness' testimony on the transaction, the prosecution's case fails. In People v. Tadepa,[73] the Court explained that the failure of the prosecution to present in court the alleged poseur-buyer is fatal to its case. Said the Court in that case, the police officer, who admitted that he was seven (7) to eight (8) meters away from where the actual transaction took place, could not be deemed an eyewitness to the crime. The Court held, viz:

In People v. Polizon[,] we said -

> We agree with the appellant's contention that the non-presentation of Boy Lim, the alleged poseur-buyer, weakens the prosecution's evidence. Sgt. Pascua was not privy to the conversation between Lim and the

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> accused. He was merely watching from a distance and he only saw the actions of the two. As pointed out by the appellant, Sgt. Pascua had no personal knowledge of the transaction that transpired between Lim and the appellant. Since appellant insisted that he was forced by Lim to buy the marijuana, it was essential that Lim should have been presented to rebut accused's testimony.
>
> The ruling in People v. Yabut is further instructive -
>
> Well established is the rule that when the inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. In the present case, accused-appellant's version of the circumstances leading to his apprehension constitutes a total denial of the prosecution's allegations. In this regard this Court has ruled that when there is such a divergence of accounts -
>
> x x x it becomes incumbent upon the prosecution to rebut appellant's allegation by presenting x x x the alleged poseur-buyer. This it failed to do giving rise to the presumption that evidence wilfully suppressed would be adverse if produced (Rule 131, Sec. 5 [e]). This failure constitutes a fatal flaw in the prosecution's evidence since the so-called (poseur-buyer) who was never presented as a witness x x x is the best witness for the prosecution x x x[.][74] (Emphasis ours)

The Court also ruled in People v. Olaes[75], that the non-presentation of the poseur-buyer was fatal to the prosecution's case, since the alleged sale transaction happened inside the accused's house; hence, it was supposedly witnessed only by the poseur-buyer, who then was the only person who had personal knowledge of the transaction.[76]

While the Court, in several instances, has affirmed an accused's conviction notwithstanding the non-presentation of the poseur-buyer in the buy-bust operation, such failure is excusable only when the poseur-buyer's testimony is merely corroborative, there being some other eyewitness who is competent to testify on the sale transaction.[77]

WHEREFORE, the Court REVERSES and SETS ASIDE the Decision dated June 29, 2010 of the Court of Appeals in CA-G.R. CR HC No. 02890, which affirmed the Decision dated June 15, 2007 of the Regional Trial Court of Laoag City, Branch 13, in Criminal Case No. 11968-13; and ACQUITS accused-appellant GARYZALDY GUZON of the crime charged in Criminal Case No. 11968-13 on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby ORDERED to immediately release Garyzaldy Guzon from custody, unless he is detained for some other lawful cause.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Leonen,[*] JJ., concur.

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[*] Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

[1] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Remedios Salazar-Fernando and Celia C. Librea-Leagogo, concurring; rollo, pp. 2-14.

[2] Issued by Presiding Judge Philip G. Salvador; CA rollo, pp. 27-41.

[3] Id. at 9-10.

[4] Id. at 9.

[5] Id. at 27.

[6] TSN, February 28, 2006, pp. 3-6.

[7] Id. at 5-6, 8-9.

[8] Id. at 11.

[9] Id. at 12.

[10] Records, p. 5.

[11] TSN, February 28, 2006, p. 13.

[12] Id. at 15.

[13] Id. at 16.

[14] Records, p. 24.

[15] Id.

[16] CA rollo, p. 54.

[17] Id. at 55.

[18] TSN, September 18, 2006, p. 3.

[19] Id. at 5-7.

[20] Id. at 7.

[21] Id. at 8, 10.

[22] Id. at 12.

[23] Id. at 14-15.

[24] Id. at 15-16.

[25] Id. at 17-18.

[26] TSN, August 3, 2006, pp. 3-4.

[27] Id. at 6-7.

[28] Id. at 8.

[29] TSN, August 15, 2006, p. 4.

[30] Id. at 7.

[31] TSN, September 7, 2006, p. 4.

[32] CA rollo, pp. 27-41

[33] Id. at 41.

[34] Rollo, pp. 2-14.

[35] Id. at 47-49.

[36] G.R. No. 180177, April 18, 2012, 670 SCRA 148.

[37] Id. at 164-165, citing People v. Obeso, 460 Phil. 625, 641 (2003).

[38] People v. Lorenzo, G.R. No. 184760, April 23, 2010, 619 SCRA 389, 400, citing People v. Villanueva, 536 Phil. 998, 1004 (2006).

[39] G.R. No. 177320, February 22, 2012, 666 SCRA 518.

[40] Id. at 531-532.

[41] People v. Mantalaba, G.R. No. 186227, July 20, 2011, 654 SCRA 188, 199, citing People v. Chua Uy, 384 Phil. 70, 85 (2000).

[42] People v. Dumaplin, G.R. No. 198051, December 10, 2012, 687 SCRA 631.

[43] People v. Remigio, G.R. No. 189277, December 5, 2012, 687 SCRA 336.

[44] People v. Umipang, G.R. No. 190321, April 25, 2012, 671 SCRA 324, 355.

[45] 576 Phil. 576 (2008).

[46] Id. at 587-588.

[47] People v. Umipang, supra note 44, 355-356; People v. Relato, G.R. No. 173794, January 18, 2012, 663 SCRA 260, 270; People v. Coreche, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 365.

[48] G.R. No. 182528, August 14, 2009, 596 SCRA 350.

[49] Id. at 357.

[50] CA rollo, p. 29.

[51] People v. Umipang, supra note 44, at 351, citing Imson v. People, G.R. No. 193003, July 13, 2011, 653 SCRA 826.

[52] Id. at 355.

[53] CA rollo, p. 52.

[54] G.R. No. 173480, February 25, 2009, 580 SCRA 259.

[55] Id. at 272, citing People v. Sanchez, G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[56] People v. Lorenzo, supra note 38, at 404.

[57] Records, p. 5.

[58] Id. at 3-4.

[59] Id. at 7.

[60] Id. at 10.

[61] Id.

[62] Id. at 11.

[63] Id. at 19.

[64] Id.

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[65] Id. at 24.

[66] Id. at 11, 19; emphasis ours.

[67] Id. at 24.

[68] People v. Peralta, G.R. No. 173472, February 26, 2010, 613 SCRA 763, 768-769.

[69] People v. Nandi, G.R. No. 188905, July 13, 2010, 625 SCRA 123, 130, citing People v. Zaida Kamad, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 303.

[70] People v. Mendoza, G.R. No. 186387, August 31, 2011, 656 SCRA 616, 628.

[71] People v. Orteza, 555 Phil. 700, 706 (2007).

[72] TSN, May 9, 2006, p. 9.

[73] 314 Phil. 231 (1995).

[74] Id. at 239-240, citing People v. Polizon, G.R. No. 84917, September 18, 1992, 214 SCRA 56 and People v. Yabut, G.R. No. 82263, June 26, 1992, 210 SCRA 394.

[75] G.R. No. 76547, July 30, 1990, 188 SCRA 91.

[76] Id. at 95.

[77] See People v. Orteza, supra note 71, at 709, citing People v. Uy, 392 Phil. 773, 786 (2000), People v. Ambrosio, 471 Phil. 241 (2004).

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