

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY YABLE Y USMAN, ACCUSED-APPELLANT.

G.R. No. 200358. April 07, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

For review of this Court is the appeal filed by Gerry Yable y Usman (Gerry) assailing the 23 May 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03303. The CA affirmed the Decision of the Regional Trial Court (RTC), Branch 78, Quezon City finding the accused guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002.

The Antecedents

On 3 May 2005, an Information was filed against Gerry before the Regional Trial Court (RTC), Quezon City for violation of Section 5, Article II of R.A No. 9165, to wit:

That on or about the 27th day of April 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, one (1) sachet of white crystalline substance containing zero point fifteen (0.15) gram of [Methamphetamine] Hydrochloride, a dangerous drug.[2]

COUNTERSTATEMENT OF FACTS

Version of the Prosecution

Acting on a tip given by a confidential informer, the Quezon City Anti-Drug Abuse Council (QC-ADAC) assembled a team to conduct a buy-bust operation in Payatas area, where a certain Gerry Yable was alleged to be selling illegal drugs

Police Officer 1 Peggy Lynne Vargas (PO1 Vargas) who was designated to act as poseur-buyer was given a Five Hundred Peso bill representing the buy-bust money. To mark the buy-bust money, she placed her initials on the forehead of Senator Benigno Aquino, Jr.[3] It was planned that PO1 Vargas would be introduced by the informer to Gerry as a buyer. After the exchange of money and shabu, PO1 Vargas would scratch her forehead to indicate the consummation of the sale and as signal for the back-up team to approach and apprehend Gerry. A pre-operation report was prepared to coordinate the buy-bust operation with the Philippine Drug Enforcement Agency (PDEA).[4]

At 12:00 o'clock noon of 27 April 2005, the team proceeded to the target area. PO1 Vargas and the informant met Gerry at Lower Yasmin Street, Payatas, Quezon City. After being introduced, Gerry allegedly asked PO1 Vargas if she will score and the latter answered "five pesos (Php 5.00) only." [5] Gerry asked for the money and took from his pocket the plastic sachet containing shabu and handed it over to PO1 Vargas. Thereafter, PO1 Vargas made the pre-arranged signal by scratching her forehead and the back-up policemen approached and introduced

themselves to Gerry. PO2 Joseph Ortiz (PO2 Ortiz) searched Gerry and found in his pocket the five hundred peso (Php500.00) bill which contained the “PV” initials.[6] PO2 Ortiz apprised Gerry of his right to remain silent and his right to engage the services of a lawyer because they would be filing a case for violation of R.A. No. 9165 against him. Gerry chose to remain silent and the team boarded him in their vehicle. He was brought to the City Hall of Quezon City to be turned over to the police investigator.[7]

Version of the Defense

Gerry denied the charges against him. He maintained that he was in a store to buy rice when the police officers passed by while pursuing a certain “Mags.” He alleged that he was approached by the policemen and was asked where “Mags” was. When he answered in the negative, he was made to ride on a motorcycle and was brought to Quezon City Hall.[8] He further alleged that the witnesses, however, positively identified him as the one selling shabu at Lower Yasmin Street and was the one apprehended by Police Officers Vargas and Ortiz.

Ruling of the RTC

On 28 March 2008, the trial court rendered a Decision finding Gerry guilty beyond reasonable doubt of the offense charged. The RTC found that the prosecution succeeded in proving beyond reasonable doubt the guilt of Gerry for violation of Section 5, Article II, R.A. No. 9165. It ruled that the evidence presented during the trial adequately established that a valid buy-bust operation was conducted by the operatives of the QC-ADAC, in coordination with PDEA. On the other hand, Gerry failed to present substantial evidence to establish his defense of frame-up. The RTC ruled that frame-up, as advanced by Gerry, is generally looked upon with disfavor on account of its aridity and the facility with which an accused could concoct the same to suit his defense.[9] With the positive identification made by the government witnesses as the perpetrator of the crime, his self-serving denial is worthless.[10] Since there was nothing in the record to show that the arresting team and the prosecution witnesses were actuated by improper motives, their affirmative statements proving Gerry’s culpability was respected by the trial court.

With caution by the court because it is easy to contrive and difficult to disprove. Like alibi, frame-up as a defense had invariably been viewed with disfavor as it is common and standard line of defense in most prosecutions arising from violation of the Dangerous Drugs Act.[11]

The Ruling of the Court of Appeals

The CA affirmed the Decision of the RTC, upon a finding that all of the elements of illegal sale of dangerous drug have been sufficiently established by the prosecution. It found credible the statements of prosecution witnesses PO1Vargas and PO2 Ortiz about what transpired during and after the buy-bust operation. Further, it ruled that the prosecution has proven as unbroken the chain of custody of evidence. The CA likewise upheld the findings of the trial court that the buy-bust operation conducted enjoyed the presumption of regularity, absent any showing of ill-motive on the part of the police operatives who conducted the same.

The CA likewise found Gerry’s defenses of denial and frame-up unconvincing and lacked strong corroboration.

Hence, this appeal.

ISSUE

Gerry raised in his brief the following errors on the part of the appellate court, to wit:

The trial court gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime charged.

The trial court gravely erred in convicting the accused-appellant despite the prosecution's failure to establish the chain of custody of the alleged confiscated drug.[12]

Our Ruling

The appeal is bereft of merit.

Gerry submits that the trial court and the CA failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II, R.A. No. 9165.[13] Gerry alleges that no physical inventory or photograph was conducted at the crime scene or in his presence. Instead, the marking of the confiscated drug was done in front of the investigator at the police precinct. Such lapses on the part of the apprehending officers raises doubt on whether the shabu submitted for laboratory examination and subsequently presented in court as evidence, was the same one confiscated from Gerry.[14]

Relevant to Gerry's case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21, paragraph 1, Article II, R.A. No. 9165, which reads:

(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[.]

This provision is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied)

Clearly, the aforecited rule authorizes substantial compliance with the procedure to establish a chain of custody, as long as the integrity and evidentiary value of the seized item is properly preserved by the apprehending officers. In *People v. Pringas*,^[15] the Court recognized that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.

Here, the prosecution recognized the procedural lapses and exerted efforts to cite justifiable grounds. During the re-direct examination of PO2 Ortiz, he testified as follows:

Q:

Were there no photographs taken?

A:

None, Sir.

Q:

Why?

A:

Because there were many people who created a commotion in the area, Sir.

Q:

What commotion are you saying?

A:

The people were curious at the time, Sir.

Q:

And why was there no barangay official who witnessed the arrest of the accused?

A:

We did not see any barangay official, Sir.

Q:

Why did you not coordinate first with the barangay officials of the place?

A:

We just secured permission, Sir.

Q:

But under the provisions of Republic Act No. 9165, you are likewise [directed] to coordinate with the barangay officials, why did you not coordinate with them?

A:

We did not do it anymore, Sir.

Q:

Any reason for that?

A:

Because according to the informant if we coordinate with the barangay officials, the suspect may come to know about it, Sir.[16]

Moreover, the fact that the marking on the seized item was done at the police station, and not at alleged crime scene, did not compromise the integrity of the seized evidence. As ruled by this Court in *Marquez v. People*,^[17] the phrase “marking upon immediate confiscation” contemplates even marking at the nearest police station or office of the apprehending team. What is important is that the seized item marked at the police station is identified as the same item produced in court.

As correctly ruled by the CA, the prosecution was able to establish the integrity of corpus delicti and the unbroken chain of custody. PO1 Vargas identified in open court the sachet of shabu that was offered in evidence against Gerry as the same one she seized from the latter and marked immediately thereafter in the presence of the police

investigator.[18]

The police investigator continued the chain when he testified that he saw PO1 Vargas making the appropriate markings on the sachet, as well as issuance of an inventory receipt as evidence of transfer of custody.[19]

At the pre-trial conference, both the prosecution and defense stipulated on the findings of the chemist or laboratory examination report. The report on the laboratory examination showed that the marking “PV-04-27-05” was indicated on the seized item. Such marking, as testified by the police investigator, was made by PO1 Vargas in his presence at the time the evidence was turned over to him. This admission of the parties completed the chain of custody of the seized item.

Furthermore, this Court has consistently ruled that even in instances where the arresting officers failed to take a photograph of the seized drugs as required under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.[20] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[21] In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Section 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.[22]

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Gerry bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.[23] Gerry in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.[24] In fact, Gerry did not even question the credibility of the prosecution witnesses. He anchored his appeal solely on the alleged broken chain of the custody of the seized drugs.

On the basis of the aforesaid disquisition, we find no reason to modify or set aside the Decision of the CA. Gerry was correctly found to be guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165.

WHEREFORE, the appeal is DENIED and the 23 May 2011 Decision of the Court of Appeals in CA-G.R. CR-HC No. 03303 is hereby AFFIRMED.

SO ORDERED.

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

[1] Rollo, pp. 2-12; Penned by Associate Justice Noel G. Tijam with Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba concurring.

[2] Records, Vol. I, p. 1.

[3] Id., Vol. III, pp. 9-10; TSN, 11 August 2005.

[4] Id. at 10-11.

- [5] Id. at 17.
- [6] Id., Vol. III, pp. 56-57; TSN, 27 October 2005.
- [7] Id., Vol. I, p. 119; RTC Decision.
- [8] Id., Vol. III, pp. 118-119; TSN, 24 January 2008.
- [9] *People v. Alib*, 379 Phil. 103, 112 (2000).
- [10] *People v. Aquino*, 379 Phil. 845, 853 (2000).
- [11] *People v. Evangelista*, 560 Phil. 510, 521 (2007).
- [12] CA rollo, p. 53; Brief for the Accused-Appellant
- [13] Id. at 8.
- [14] Id. at 9.
- [15] 558 Phil. 579, 593 (2007).
- [16] Records, Vol. III, pp. 75-76; TSN, 14 February 2006.
- [17] G.R. No. 197207, 13 March 2013, 693 SCRA 468, 475.
- [18] Rollo, pp. 8-9; CA Decision citing TSN, 11 August 2005, records, Vol. III, pp. 19-20.
- [19] Id. citing TSN, 28 March 2006, records, Vol. III, pp. 92-94.
- [20] *People v. Jose Almodiel*, G.R. No. 200951, 5 September 2012, 680 SCRA 306, 323; *People v. Campos*, G.R. No. 186526, 25 August 2010, 629 SCRA 462, 468 citing *People v. Concepcion, et al.*, 578 Phil. 957, 971 (2008).
- [21] *People v. Mangundayao*, G.R. No. 188132, 29 February 2012, 667 SCRA 310, 338; *People v. Le*, G.R. No. 188976, 29 June 2010, 622 SCRA 571, 583 citing *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 133 further citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 448; *People v. Concepcion*, 578 Phil. 957, 971 (2008).
- [22] *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 469-470 citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 520-521 further citing *People v. Rivera*, G.R. No. 182347, 17 October 2008, 569 SCRA 879, 897-899.
- [23] *People v. Miranda*, 560 Phil. 795, 810 (2007).
- [24] See *People v. Macabalang*, 538 Phil. 136, 155 (2006).

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