

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAROK LUMUDAG Y RACMAN @ AKMAD, ACCUSED-APPELLANT.

G.R. No. 201478. August 23, 2017

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The State bears the burden of establishing the guilt of the accused beyond reasonable doubt. Any doubt regarding the evidence of guilt is resolved in favor of the accused.

The Case

Parok Lumudag y Racman, alias Akmad, appeals the decision promulgated on July 13, 2011 in CA-G.R. C.R.-H.C. No. 04286,[1] whereby the Court of Appeals (CA) affirmed his conviction for violation of Section 5, Article II, of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) by the Regional Trial Court (RTC), Branch 2, in Manila.[2]

Antecedents

On September 9, 2008, the Office of the City Prosecutor of Manila filed the following information charging Lumudag with illegal sale of shabu, defined and penalized by Section 5 of R.A. No. 9165, to wit:

That on or about September 6, 2008, in the city of Manila, Philippines, the said accused, not being lawfully authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell ZERO POINT ZERO SIXTEEN (0.016) gram of white crystalline substance containing methylamphetamine hydrochloride commonly known as SHABU, a dangerous drug.

Contrary to law.[3]

The CA summarized the respective versions of the parties in the assailed decision, as follows:

On 6 September 2008, a confidential informant reported to Col. Roderick Mariano, Chief of the District Anti-Illegal Drug (DAID) Office at U.N. Avenue Police Station in Manila the alleged drug peddling activities of a certain alias Akmad along Arlegui St., Quiapo, Manila. Col. Mariano formed a team to conduct a buy bust operation headed by SPO4 Rafael Melencio, PO2 Richard Donato as the poseur buyer, and PO3 Eliseo Tolentino. PO2 Donato prepared the 200.00 marked bill as buy bust money and coordinated with the Philippine Drug Enforcement Agency (PDEA).

At around 6:00 p.m. of the same day, PO2 Donato and PO3 Tolentino proceeded to Arlegui St., Quiapo, Manila on board the tricycle of the former, together with the confidential informant. The other police officers boarded a Tamaraw FX vehicle. When they arrived near the target area, PO2 Donato and the confidential informant walked toward MLQU (Manuel L. Quezon University) where accused-appellant was waiting. The informant approached accused-appellant and introduced PO2 Donato as a buyer of shabu. The latter handed the P200.00 marked money to accused-appellant. After receiving the money, accused-appellant took out from his pocket one (1) heat sealed plastic sachet and handed the same to PO2 Donato. The latter immediately executed

the pre-arranged signal prompting the other police officers to approach and effect the arrest of accused-appellant.

PO2 Donato marked the confiscated drug "DAID". Afterward, accused-appellant was brought to the police station. The confiscated drug was submitted to the Manila Police District Crime Laboratory (MPDCLO) for laboratory examination. The forensic chemist, Police Senior Inspector (PSI) Erickson L. Calabocal, conducted a qualitative examination. PSI Calabocal found that the specimen tested positive for shabu or methamphetamine hydrochloride, a prohibited drug.

On the other hand, evidence for the defense sought to establish the following:

On 6 September 2008, accused-appellant, a vendor residing at Barter St., Quiapo, Manila, was throwing his garbage at said street. The bag of garbage accidentally fell on a pool of water on the road, thus hitting/splashing one of the men riding a motorcycle. One of the men alighted from the motorcycle and poked a gun at accused-appellant. He was brought to the DAID at U.N. Avenue Police Station where the police officers mauled him and demanded money from him. Accused-appellant learned of the charge against him when he was detained at the Manila City Jail. PO3 Tolentino was one of the persons who arrested him. Accused-appellant denied the charge filed against him.[4]

Judgment of the RTC

On December 1, 2009, the RTC convicted Lumudag of the crime charged, disposing:

WHEREFORE, from the foregoing, judgment is hereby rendered, finding the accused, Parok Lumudag y Racman @Akmad, 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 specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.[5]

Decision of the CA

Lumudag appealed,[6] submitting that:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE MATERIALLY INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ELEMENTS OF THE CRIME CHARGED.

III.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE ARRESTING OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.[7]

On July 13, 2011, the CA promulgated the assailed decision affirming the conviction of Lumudag, to wit:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The Decision of the RTC of Manila, Branch 2 dated 1 December 2009 is AFFIRMED.

SO ORDERED.[8]

Issues

In this appeal, Lumudag seeks the reversal of his conviction for being contrary to the facts, law and applicable jurisprudence.[9]

Ruling of the Court

The appeal has merit.

The Prosecution must establish the concurrence of the following elements for the conviction of the accused for illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, namely: (a) that the transaction or sale took place between the accused and the poseur-buyer; and (b) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the corpus delicti.[10]

The RTC and CA found and considered credible the testimony of poseur-buyer PO2 Richard Donato on the sale of shabu to him by Lumudag during the buy-bust operation. Relevant excerpts of PO2 Donato's testimony follow:

Q: So, what happened when you were introduced? Who are you then in relation to the introduction?

A: That I am the buyer of shabu, sir.

Q: Was there any response of Akmad?

A: He agreed, sir.

Q: When he agreed what was his action?

A: And then, the CI introduced me of my willingness to buy a shabu, sir.

Q: So, when he agreed, what happened next?

A: And then, I handed the buy bust money worth of P200 to him, sir.

Q: In other words, after you were introduced you immediately gave the money?

A: Yes, sir, as willingness to buy and he agree to buy the shabu, sir.

Q: Were you saying anything when you gave the money?

A: None, sir.

Q: So, when it was handed to Akmad what happened next?

A: He took out one heat-sealed plastic sachet, sir, suspected to be shabu.

Q: So, he received the money?

A: Yes, sir.

Q: So, what happened when it was in his possession, the money?

A: He received the money, sir.

Q: So, what happened next?

A: He took out one heat-sealed plastic suspected to be shabu and gave it to me, sir.

Q: Coming from where?

A: At the right front pocket of maong pants, sir.

Q: So, he gave it to you?

A: Yes, sir.

Q: What was the content of the plastic sachet?

A: One heat-sealed plastic sachet suspected shabu, sir.[11]

Generally, the assessment by the trial judge of the credibility of the witnesses is accorded the highest respect on appeal primarily because of his unique opportunity to directly observe the demeanor of the witnesses, thereby enabling him to determine the truthfulness and reliability of their testimonies. This assessment, once affirmed by the CA, is binding and conclusive upon the Court, unless there is a showing that certain facts or circumstances had been overlooked or misinterpreted that, if properly considered, would substantially affect the ruling of the case.[12]

In this case, however, it was wrong on the part of the RTC and the CA to accord complete credence to the testimonies of the State's witnesses, particularly that of poseur-buyer PO2 Donato. We are troubled by a pestering doubt about the authenticity of the evidence of the corpus delicti presented in court. In this connection, Lumudag vigorously points out that the Prosecution did not prove that there had been faithful compliance with the rule on chain of custody, with the result that the evidence of the corpus delicti became suspect.

Section 21, paragraph 1, Article II of R.A. No. 9165 and Section 21 (a), Article II of its Implementing Rules and Regulations (IRR) are pertinent.

Section 21 of R.A. No. 9165 relevantly provides:

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:

(1) The apprehending team having initial custody and control of 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

Section 21 (a), Article II of the IRR of R.A. No. 9165 reads:

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, 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

The records reveal that the buy-bust team did not faithfully observe the foregoing statutory requirements, such as

performing the physical inventory and photographing of the illegal drug immediately upon seizure and confiscation, and in the presence of a representative of the media and the Department of Justice (DOJ), and of any elected public official who would then be required to sign the inventory and be given copies thereof. The requirements were precisely designed by the law to prevent planting, or switching, or contamination of evidence, and thereby secure the suspects against malicious incriminations. In the field of drug enforcement, the need for the requirements to be literally followed, or at least to be substantially complied with, has become all the more pronounced. By specifying the steps to be taken for preserving the chain of custody, Congress really established firm guarantees against false incriminations of individuals that the lawless elements among the ranks of the law enforcers had often resorted to.

It is true that Section 21(a) of the IRR, *supra*, provides that the "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." Yet, such saving mechanism is conditioned upon a clear showing on the part of the agents of the law not only that the non-compliance with the requirements was upon justifiable grounds, but also that the evidentiary value of the seized items was properly preserved by the apprehending team. As the records bear out, however, the required justification was not given herein by any of the members of the buy-bust team.

Lumudag has challenged the police officers' failure to comply with the requirements outlined in Section 21 of R.A. No. 9165 only for the first time on appeal.[13] The delay of his challenge hardly matters. It was really not up to the Defense to raise such issue at the start because the disclosure of the necessary justification for any lapse or gap in following the requirements was always the sole responsibility of the State by virtue of the obligation of the members of the buy-bust team themselves to explain why the lapses or gaps had occurred.[14] To state otherwise is to contravene the constitutional guarantee of due process of law, particularly the presumption of innocence in favor of the accused. Verily, without the State's justification for the lapses or gaps, the chain of custody so essential in the establishment of the *corpus delicti* of the offense charged against Lumudag was not shown to be unbroken and preserved.

The non-disclosure of the justification by the members of the buy-bust team underscored the uncertainty about the identity and integrity of the shabu admitted as evidence against the accused.[15] The unavoidable consequence of the non-disclosure of the justification was the non-establishment of the chain of custody, which, in turn, raised serious doubt on whether or not the shabu presented as evidence was the shabu supposedly sold by Lumudag, or whether or not shabu had really been sold by him.

We should always demand that in every prosecution of the sale and possession of methamphetamine hydrochloride prohibited under Republic Act No. 9165, the State must alone discharge the heavy burden of proving the elements of the offense, and should the State not discharge its burden, we should then unhesitatingly hold and pronounce that the guilt of the accused had not been proven beyond reasonable doubt. Without the credible proof of the unbroken and unassailable chain of custody, the evidence of the *corpus delicti* was not adduced. This could mean either that the dangerous drug truly the subject of the prosecution had been lost or gone missing, or that the substantial gaps in the chain of custody of the prohibited substance worked against the authenticity of the dangerous substance presented as evidence in court.[16] Without question, any substantial gap rendered the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[17]

Thus, Lumudag deserves acquittal from the crime charged on the ground of reasonable doubt of his guilt.

WHEREFORE, the Court REVERSES and SETS ASIDE the decision promulgated on July 13, 2011 in CA-G.R.

CR-H.C. No. 04286; ACQUITS accused-appellant PAROK LUMUDAG y RACMAN alias AKMAD on the ground that his guilt was not established beyond reasonable doubt; and DIRECTS his immediate release from confinement at the National Penitentiary in Muntinlupa City unless there are other lawful causes warranting his continuing confinement thereat.

The Court ORDERS the Director of the Bureau of Corrections to implement the immediate release of PAROK LUMUDAG y RACMAN alias AKMAD, and to report on his compliance within ten days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

Velasco, Jr., (Chairperson), Leonen, Martires, and Gesmundo, JJ., concur.

NOTICE OF JUDGMENT

Sirs /Mesdames:

Please take notice that on August 23, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 18, 2017 at 2:35 p.m.

Very truly yours,

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

ORDER OF RELEASE

TO:

The Director
Bureau of Corrections
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on August 23, 2017 promulgated a Decision in the above-entitled case, the dispositive portion of which reads:

WHEREFORE, the Court REVERSES and SETS ASIDE the decision promulgated on July 13, 2011 in CA-G.R. CR-H.C. No. 04286; ACQUITS accused-appellant PAROK LUMUDAG y RACMAN alias AKMAD on the ground that his guilt was not established beyond reasonable doubt; and DIRECTS his immediate release from confinement at the National Penitentiary in Muntinlupa City unless there are other lawful causes warranting his continuing confinement thereat.

The Court ORDERS the Director of the Bureau of Corrections to implement the immediate release of PAROK LUMUDAG y RACMAN alias AKMAD, and to report on his compliance within ten (10) days from receipt.

No pronouncement on costs of suit.

SO ORDERED."

NOW THEREFORE, You are hereby ordered to immediately release PAROK LUMUDAG y RACMAN alias AKMAD unless there are other causes for which he should be further detained, and to return this Order with the certificate of your proceedings within ten (10) days from notice hereof.

GIVEN by the Honorable PRESBITERO J. VELASCO, JR., Chairperson of the Third Division of the Supreme Court of the Philippines, this 23[rd] day of August 2017.

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

[1] Rollo, pp. 2-14; penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justice Josefina Guevara-Salonga and Associate Justice Franchito N. Diamante concurring.

[2] CA records, pp. 9-14; penned by Judge Alejandro G. Bijasa.

[3] Id. at 9.

[4] Rollo, pp. 3-5.

[5] CA records, p. 14.

[6] Id. at 16.

[7] Id. at 34-35.

[8] Rollo, p. 14.

[9] Id. at 16.

[10] *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 130.

[11] CA records, pp. 79-80.

[12] *People v. Medenceles*, G.R. No. 181250, July 18, 2012, 677 SCRA, 161, 167.

[13] Rollo, p. 13.

[14] *People v. Sanchez*, G. R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

[15] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 657.

[16] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

[17] *People v. Sanchez*, *supra*, note 14, at 221.

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