

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JONALYN ABENES Y PASCUA, ACCUSED-APPELLANT.

G.R. No. 210878. July 07, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Assailed in this appeal is the August 22, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04923, which affirmed the February 14, 2011 Decision[2] of the Regional Trial Court (RTC), Branch 61, Baguio City, finding Jonalyn Abenes y Pascua (appellant) guilty beyond reasonable doubt of violation of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs), Article II of Republic Act (RA) No. 9165 or The Comprehensive Dangerous Drugs Act of 2002.

The parties' respective version of the incident was summarized by the CA as follows:

Version of the Prosecution

On July 4, 2009, at around 5:00 in the afternoon, SPO1 Reynaldo Badua [SPO1 Badua] received a tip from a female informant that appellant involved in the sale of shabu. An hour later, after the informant was able to contact appellant, SPO1 Badua, PO1 Albert Lag-ey [PO1 Lag-ey] and [PO1 Geliza Moyao] PO1 Moyao prepared a buy-bust operation. As arranged by the informant, she and SPO1 Badua, the designated poseur-buyer, was to meet with appellant in front of Leisure Lodge, Upper Magsaysay Avenue, Baguio City to buy P1,000.00 worth of shabu.

At around 6:30 in the evening, the buy-bust team proceeded to the target area. After about 30 minutes from arrival, appellant approached SPO1 Badua and the informant. The informant introduced SPO1 Badua to appellant as the interested buyer. SPO1 Badua then handed to appellant the buy-bust money; the latter handed in turn a plastic sachet containing white crystalline substance.

Upon seeing that the exchange had already taken place, PO1 Lag-ey and PO1 Moyao, who were strategically positioned some two meters away, approached appellant and placed her under arrest. Appellant was informed of her constitutional rights and was subjected to a body search. Another plastic sachet containing white crystalline substance was found on appellant's person.

Thereafter the two plastic sachets were marked on site. Appellant was then brought to the police station where the arresting officers likewise prepared their affidavit, Inventory, Booking Sheet, Qualitative Examination Request and Urine Request.

The confiscated specimen tested positive for the presence of methylamphetamine hydrochloride.

Version of the Defense

At around 3:00 o'clock in the afternoon of July 4, 2009, JONALYN ABENES traveled from their home in La Trinidad, Benguet to Magsaysay Avenue in Baguio City where she has been working as a GRO together with her friend Jing Jing since the year 2004. Upon reaching the place, she headed to the room being occupied by Jing Jing at the Leisure Lodge. She asked her friend to go with her if she knows someone who sells shabu.

After Jing Jing answered that she does not know of anybody selling shabu, [a] woman invited her to Katipunan Inn located at the back of Center Mall. Jing Jing acceded and the two of them went with this woman to Katipunan Inn where they got a room. Inside, the woman brought out shabu which the three of them consumed.

Thereafter, the accused was told by Jing Jing and the woman to return to the overpass. Accused left the duo, but instead of going to the overpass, she went to Leisure Lodge to freshen up at Jing Jing's room. As she was freshening up, someone knocked at the door. She opened the door and saw a man and woman who were looking for Jing Jing. She told the two that Jing Jing was not in the room. They asked her who she was and after she gave her name, the two introduced themselves as police officers and informed her that they have arrested Jing Jing and that she is being pointed to by [Jing Jing] as the source of shabu. She angrily told the police officers that the shabu taken from Jing Jing did not come from her but the police officers would not believe her. They handcuffed her and brought her down from the Leisure Lodge. As they were going downstairs, she saw Jing Jing asking for forgiveness for pointing to her as the shabu source.[3]

Ruling of the Regional Trial Court

Giving credence to the prosecution witnesses who are presumed to have performed their duties in a regular manner, the RTC ruled the prosecution has sufficiently proven that appellant was caught in flagrante delicto selling dangerous drug to a law enforcement agent who posed as buyer and while being frisked, another plastic sachet containing white crystalline substance was found in her possession. When these items were subjected to chemistry examination, they were found positive for the presence of methamphetamine hydrochloride commonly known as shabu, a dangerous drug. The RTC rejected appellant's claim of frame-up. It took serious consideration of appellant's admission that she was indeed into illegal drugs. It thus found appellant guilty beyond reasonable doubt as charged. The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered finding the accused GUILTY, as follows:

- a) In Criminal Case No. 29607-R, she is hereby sentenced to suffer a prison term of Twelve (12) Years and One (1) day to Twenty (20) Years and to pay a fine of Three Hundred Thousand (P300,000.00) Pesos, and
- b) In Criminal Case No. 29608-R, she is hereby sentenced to Life Imprisonment and to pay a fine of One Million (P1,000,000.00) Pesos.

The dangerous drugs subject of these cases are ordered destroyed in accordance with law.

SO ORDERED.[4]

Ruling of the Court of Appeals

Appellant appealed to the CA faulting the trial court in finding her guilty despite the prosecution's failure to prove the same beyond reasonable doubt and non-compliance with Section 21 of RA 9165 and its Implementing Rules and Regulations resulting to a broken chain of custody over the confiscated drugs.

By its assailed Decision of August 22, 2013, the CA affirmed the RTC Decision after finding the same to be in accordance with law and the evidence.

The CA ruled that the prosecution has clearly established that the sachets containing white crystalline substance offered as evidence before the lower court are the same sachets confiscated from the appellant during the buy-bust operation. Moreover, the CA observed that the integrity and evidentiary value of the confiscated drugs were duly preserved as the chain of custody of the same has been clearly established with supporting evidence. Thus:

WHEREFORE, the Decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED.

SO ORDERED.[5]

Our Ruling

The appeal is partly meritorious.

In the prosecution of illegal sale of drugs to prosper, the following elements must be proven: "(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment for it." [6]

In the present case, these elements were satisfied by the prosecution's evidence. The prosecution witnesses positively identified appellant as the seller of the white crystalline substance which was found to be methamphetamine hydrochloride or shabu. Appellant sold the drug to SPO1 Badua, a police officer who acted as poseur-buyer for a sum of P1,000.00. The prosecution's witnesses likewise positively and categorically testified that the transaction or sale actually transpired. The subject shabu weighing 0.02 grams and the money amounting to P1,000.00 were also identified by the witnesses when presented in court.

Appellant makes capital on the prosecution's alleged failure to comply with the requirements of law [7] with respect to the proper marking, inventory and taking of photograph of the seized specimen. However, it does not escape the Court's attention that appellant failed to contest the admissibility in evidence of the seized item during trial. In fact, at no instance did she manifest or even hint that there were lapses on the part of the police officers in handling the seized item which affected its integrity and evidentiary value. "[O]bjection to the admissibility of evidence cannot be raised for the first time on appeal." [8] In the present case, the police operatives' alleged non-compliance with Section 21, Article II of RA 9165 was raised for the first time on appeal before the CA. In any event, it is "settled that an accused may still be found guilty, despite the failure to faithfully observe the requirements provided under Section 21 of RA 9165, for as long as the chain of custody remains unbroken." [9] Here, it is beyond cavil that the prosecution was able to establish the necessary links in the chain of custody of the specimen subject of the sale from the moment it was seized from appellant, the delivery of the same to the crime laboratory up to the time it was presented during trial as proof of the corpus delicti. As aptly observed by the CA:

Prosecution witness SPO1 Reynaldo Badua consistently testified that he had the initial control of the sachet of shabu subject of the illegal sale case. He also stated that he marked the same with "RCB" he, together with the sachet subject of the illegal possession case personally brought the two (2) sachets of shabu to the crime laboratory for qualitative examination x x x. [10]

While we uphold the finding of guilt beyond reasonable doubt of appellant by the trial court and affirmed by the CA in the illegal sale of shabu in Criminal Case No. 29608-R, we are of the considered view, however, that the quantum of evidence needed to convict, that is proof beyond reasonable doubt, has not been adequately established by the prosecution in the charge of illegal possession of dangerous drug under Section 11, Article II of RA 9165 in Criminal Case No. 29607-R.

We have carefully scrutinized the evidence presented by the prosecution especially the testimonies of SPO1 Badua and PO1 Lag-ey and miserably, they were not able to provide a clear identification of the illegal drug seized from appellant's possession.

We quote pertinent portions of SPO1 Badua's testimony:

Q

I have with me a brown envelope, Mr. witness, with markings, and inside this envelope are two plastic sachets. Will you please go over these two and tell this Court which of these two are handed to you by Jonalyn?

A

This is the one, Ma'am.

Q

Why do you say that this is the sachet that was handed to you by Jonalyn?

A

Because my initial RCB is there.

xxxx

Q

Who arrested the subject, Mr. witness?

A

PO3 Lag-ey and PO1 Moyao.

Q

Now, after arresting Jonalyn what did they do?

A

Officer Lag-ey narrated to her her constitutional rights and PO1 Moyao frisked her.

Q

PO1 Moyao is a female?

A

Yes, Ma'am.

Q

And what did she say [sic] in the person of Jonalyn if you know?

A

She was able to seize one transparent sachet.

Q

How about you what did you do with that sachet which was sold to you by Jonalyn?

A

I marked, Ma'am.

xxxx

Q

What did officer Moyao do with that sachet?

A

After he retrieved the sachet he marked at the site.[11]

For his part, SPO1 Albert Lag-ey testified:

Q

Was Jonalyn Abenes subjected to a body searched?

A

Yes, Ma'am.

Q

Who did that?

A

PO1 Moyao, Ma'am.

Q

And what did [she] find on the person of Jonalyn Abenes?

A

She recovered another item.

Q

And what did she do with this item?

A

After PO 1 Moyao marked it she turned over to PO3 Badua.[12]

On cross-examination, SPO1 Lag-ey testified:

Q

Now, another item was allegedly seized by Officer Moyao?

A

Yes sir.

Q

And according to you, it was marked by Officer Moyao at the place of operation?

A

Yes, sir.

Q

And do you know what Officer Moyao did with that item which he seized from Jonalyn Abenes?

A

His initials, sir.[13]

From the foregoing revelations, there was no clear identification of the item allegedly seized from the possession of appellant after the sale. Of all the people who came into direct contact with the sachet of shabu purportedly seized from appellant, it was only PO1 Moyao who could directly and possibly observe the uniqueness thereof in court. According to SPO1 Badua and SPO1 Lag-ey, it was PO1 Moyao who took initial custody of the seized plastic sachet when appellant was frisked at the time of arrest and who allegedly marked the same with initials. But for no apparent reason, PO1 Moyao was not even presented in court to identify the plastic sachet and more importantly to acknowledge the alleged marking thereon as her own.

"In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. It is therefore of prime importance that in these cases, the identity of the dangerous drug be likewise established beyond reasonable doubt." [14] With the material omission to indubitably show the identity of the dangerous drug, subject matter in the charge of illegal possession, we rule and so hold that the evidence for the prosecution casts serious doubt as to the guilt of the appellant for it has not proven the indispensable element of corpus delicti. While as a rule we desist from disturbing the findings and conclusions of the trial court especially when affirmed by the appellate court, we must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt since the fundamental law presumes that the accused is innocent. This presumption must prevail until the end unless overcome by strong, clear and compelling evidence. The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence. [15] While admittedly, appellant's defense of denial and frame-up is inherently weak and commonly used in drug-related cases, we are not unmindful of the settled principle that conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.

WHEREFORE, in view of the foregoing, the instant appeal is PARTLY GRANTED. The August 22, 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04923 affirming the February 14, 2011 Decision of the Regional Trial Court, Branch 61, Baguio City is AFFIRMED with modification. Appellant Jonalyn Abenes y Pascua is ACQUITTED of illegal possession of dangerous drug under Section 11, Article II of Republic Act No. 9165, the crime charged in Criminal Case No. 29607-R on ground of reasonable doubt.

SO ORDERED.

Carpio, (Acting C.J.[*]& Chairperson), Brion, and Leonen, JJ., concur.
Mendoza, J., on official leave.

[*]Per Special Order No. 2357 dated June 28, 2016.

[1] CA rollo, pp. 80-92; penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.

[2] Records, pp. 155-159; penned by Judge Antonio C. Reyes.

[3] CA rollo, pp. 83-84.

[4] Records, p. 159.

[3] CA rollo, pp. 83-84.

[4] Records, p. 159.

[5] CA rollo, p. 91.

[6] *People v. Rusiana*, 618 Phil. 55, 63 (2009).

[7] REPUBLIC ACT NO. 9165, Article II, 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 drug 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

[8] *People v. Domado*, 635 Phil. 74, 86 (2010).

[9] *People v. Amarillo*, 692 Phil. 698, 711 (2012).

[10] CA rollo, p. 87.

[11] TSN, March 10, 2010, pp. 15-19.

[12] TSN, January 26, 2010, pp. 14-15.

[13] TSN, March 9, 2010, pp. 15-16.

[14] *People v. Obmiramis*, 594 Phil. 561, 569-570 (2008).

[15] *Cacao v. Prieto*, 624 Phil. 634, 649 (2010).

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